



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL MURDER NO. 15 OF 2016**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**MARY WAWIRA NGARI.....ACCUSED**

**RULING**

1. The accused person in this case **Mary Wawira Ngari** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. She filed an application by way of Notice of Motion under **Article 49(1)(h)** and **Article -2-** of the **Constitution of Kenya** seeking an order that she be released on bail pending the hearing and determination of the case. In the alternative the accused person be released on bond and surety pending hearing and determination of this case.

2. The application is based on the grounds that the accused has a constitutional right to bail pending the hearing of this case, she is a farmer at Karumandi within Kirinyaga County and that she is presumed innocent until proved guilty. Further that she pleads innocent and she is ready to abide by any conditions which the Court may set. That there are no compelling reasons to deny her bail.

3. The State did not oppose the application. They however, pray that in view of the serious nature of the offence, stiff bail terms be imposed.

4. I have considered the application. Under **Article 49 (1) (h)** of the Constitution bail pending trial is a constitutional right which should not be denied unless there are compelling reasons not to be released. It is provided:

***“An arrested person has the right –***

***To be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”***

5. The offence which the accused is charged with is bailable.

6. The State has not opposed the application. There is therefore no compelling reason to deny the accused person bail.

7. The accused relied on the case of **R -V- Serah Wakarima H.C. Cr. C. No. 62/08.**

***“Admittedly, admission to bail is a constitutional right of an accused person.....***

***Even without the constitutional provision, generally in principle and because of the***

***presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail.***

8. Where there are no compelling reasons and the State does not oppose the application, the accused person should be allowed to enjoy the Constitutional right to bail.

9. The principles have been stated in a number of cases and in the case of **R -V- Hillary Mugo Mwendia and 2 others Cr. Case No. 7/2012 High Court Kerugoya where the case of Nganga -Vs- Republic (1985) KLR 451 and Marui -V- Republic 1985 KLR 279** were cited. It was held that;

***“Generally and because of the presumption of innocence an accused person should be granted bail unless it is shown by the prosecution that there are substantial grounds to believing that;***

***a. The accused will fail to turn up at his trial or to surrender to custody, or (b) the accused may commit further offences or (c) he will distract the cause of justice and (d) the accused would cause more by absconding.”***

10. None of these grounds was shown by the prosecution as bail was not opposed. I have considered the fact that the offence is serious as urged by the State, however, where bail is not opposed this can only come in when the court is exercising discretion to set the bail terms.

11. The application for bail has merits. I allow it. The accused shall be released on a bond of Ksh.1,000,000/- plus two sureties of like amount.

***Dated and delivered at Kerugoya this 17<sup>th</sup> day of March, 2017.***

**L. W. GITARI**

**JUDGE**

17.3.2017

L. W. Gitari J.,

M/S Muthoni for State

Mr. Magee holding brief for Mr. Ndana for Accused

Accused present

Court Assistant Naomi Murage

Interpretation Kikuyu English

**ORDER:** Ruling read out in the open court.

**L. W. GITARI**

**JUDGE**

17.3.2017