



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL CASE NO. 4 OF 2017**

REPUBLIC ..... PROSECUTOR

VERSUS

MARY NJERI NDUNGU ..... ACCUSED

**RULING**

1. **MARY NJERI NDUNGU** is facing a charge of **murder contrary to section 203 as read with section 204 of the Penal Code**. She pleaded not guilty. Pending her trial she has sought that she be granted bail.
2. A pre bail probation report was availed. It shows that the community of Maralal town where the accused resided with her deceased's husband is not welcoming her release on bail. The information in that report however shows that the accused family, residing in Kiambu are willing to have her stay at their home while this case is pending.
3. The accused has two children one 10 years old and another 2 ½ years old. Those children are presently being taken care of by their paternal uncle namely Charles Maina Wambugu.
4. In the case **REPUBLIC V MAMUSH HIRBO FAJA [2014]eKLR** the court stated thus while discussing an accused's right to bail:-

***“Article 49(1)(h) provides that an accused person is entitled to be released on bond/bail unless the prosecution has compelling reasons to the contrary. The right to bail is therefore not absolute and it is at the discretion of the court.***

***The right to bail does not depend on whether or not the prosecution have strong evidence against eh accused. The relevant constitutional provision does not classify offences that areailable or not – Bail is open to all offences including capital offences. The basis of this right has a bearing on the presumption of innocence until proven guilty as provided by Article 50(2)(a). The seriousness of the offence and the strength of the evidence is therefore, not a basis of denying the accused person bail.”***

There is no doubt the accused has a right to be released on bail since there is no compelling reason not to release her.

5. Since the prosecution did not oppose the bail application and because it is in the interest of the accused children that she be granted bail this court will accede to the application for bail. The accused and her family members are of limited economic ability and the court will bear that fact in mind.

6. The orders of the court are:-

*(a) The accused Mary Njeri Ndungu shall be released pending trial on her own bond of Kshs.500,000.*

*(b) It is a condition of the accused release that she shall reside out of the Maralal town until determination of this case.*

*(c) Once released on bail the custody of the accused children shall be returned to the accused.*

**DATED AND DELIVERED THIS 14<sup>TH</sup> DAY OF JUNE 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Accused: Mary Njeri Ndungu .....

For Accused .....

For the State: .....

**COURT**

Ruling delivered in open court.

**MARY KASANGO**

**JUDGE**