



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 10 OF 2014

REPUBLICPROSECUTOR

VERSUS

GLADYS NTHENYA REUBEN.....ACCUSED

RULING

1. The applicant, Gladys Nthenya Reuben was arraigned before this court on a charge of murder contrary to section 203 as read with section 204 of the Penal Code (Cap. 63) Laws of Kenya.

The Applicant pleaded not guilty.

2. By Notice of Motion dated 18th September, 2014 the Applicant applied to be released on bond pending appeal. It is stated in the affidavit in support that the applicant has health problems and the prison environment and diet is not favourable. The Applicant undertakes to abide by the terms and conditions of bail.
3. The application is opposed. According to the replying affidavit sworn by the investigating officer, the seriousness of the offence and the severity of the sentence it attracts will be an incentive for the offender to jump bail.
4. I have considered the application, the reply and the probation report by the probation officer. The said report is favourable.
5. **Section 49 (1) of the Constitution** provides as follows:-

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending the charge or trial unless there are compelling reasons not to be released.”

6. However, the court has discretion to grant or refuse bail depending on the circumstances of each case. The court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case or pending the hearing of an appeal. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic (1986) KLR 600**. The said principles include the following; the nature of the offence, the strength of the evidence, the character or behavior of an accused and the seriousness of the punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exist which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused will interfere with witnesses if he is released on bond.
7. The State has not given any compelling reasons why the Applicant should not be released on bond. Compelling reasons should not be a matter of conjecture, guesswork or speculation. Being

supplied with statements of prosecution witnesses is a matter of right guaranteed by the Constitution under Article 50(2)(j). The provision for death sentence cannot be used against the Applicant as that would negate the Constitutional guarantee for bail in capital offences.

9. I allow the application on condition that the Applicant should not either directly or indirectly contact any of the prosecution's witnesses. The Applicant may be released on a **Kshs. 1 Million** personal bond with one surety of a like sum.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 12th day of May **2015**

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B. THURANIRA JADEN

JUDGE