



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. 81 OF 2013**

REPUBLIC.....  
.....PROSECUTOR

-VERSUS -

WILSON KUNGU WANJOHI.....1<sup>ST</sup>  
ACCUSED

SAMUEL GICHERU NJOROGE.....2<sup>ND</sup>  
ACCUSED

**RULING**

The applicant Wilson Kungu Wanjohi faces a charge of **murder** contrary to **Section 203** as read with **204 of Penal Code**.

This is an application for bail pending determination of this trial grounded on the affidavit of the applicant. The applicant depones that he has a young family of a wife and one year old child. He is the sole breadwinner of the family. The applicant states that he has been in custody and since 30<sup>th</sup> June 2013.

The prosecution opposed the application on grounds that the witnesses are close family members of the applicant and that if he is released on bond, he is likely to interfere with witnesses. The prosecution fear that the applicant is likely to abscond given the nature and seriousness of the offence which carries a death sentence. The investigating officer P.C. Nyangresi Nyabuba depones in his affidavit that there is another suspect who is still at large and pleads with the court not to release the accused person on bond until the suspect arrested. The prosecution rely on the strength of the evidence as a reason to oppose bond.

Mr. Oira for the applicant submitted that the prosecution have not shown any good reason for not granting bail to the applicant.

The current law on bail is contained in **Article 49(1)(h)** of the **Constitution** which states:

“Any arrested person has the right –

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

**Article 50(2) (a)** presumes every accused person innocent until proven guilty.

It is clear that the Constitution does not draw a distinction between a capital and a non-capital offence in regard to bail. The only hindrance would be the circumstances proven by the prosecution which the court may find to be compelling against release of the applicant. The issue of granting bail is therefore a discretionary matter for the court. The “compelling” reasons must therefore be forceful and powerful given the ordinary meaning of the word.

It therefore follows that the fear of the applicant absconding due to the seriousness of the sentence cannot amount to a compelling reason. Neither can the ground of strong evidence against the applicant stand the test under **Article 49(1)(h)**. The reason for this argument is the presumption of innocence till proven guilty. The court may use reasonable conditions for release which may help to minimize the likelihood of absconding.

The prosecution have not demonstrated any evidence of any attempt to interfere with witnesses by the applicant. No single incident of interference has been cited by the investigating officer. Now that bail is available and open to all offenders whether capital, petty offenders or otherwise, the seriousness of the charge and the severity of the sentence is not a good reason not to grant bail.

I have carefully considered the arguments of both sides. I am convinced that the prosecution has failed to show any compelling reason not to release the applicant on bail. This application is therefore merited and is hereby allowed on the following terms:

- a. That the applicant shall be released upon executing a bond of Shs.1,000,000/= with two suitable sureties;
- b. That he will attend monthly mentions till the case is finally disposed of;
- c. That he will not leave the jurisdiction of this court without its permission;
- d. That he shall not in any way interfere with the prosecution witnesses;
- e. That breach of any of the foregoing conditions shall lead to automatic cancellation of the bond.

**F. MUCHEMI**

**JUDGE**

**Ruling** dated and delivered on the **15<sup>TH</sup>** day of **May, 2014** in the presence of:-

1. Both accused present
2. Mrs. Mwaniki for State
3. Mrs. Kinyori for Ratemo Oira for accused

**F. MUCHEMI**

**JUDGE**