



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE NO. 33 OF 2012

REPUBLIC.....PROSECUTOR

versus

RICHARD GITHAIGA WACHIRA.....ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code, the particular of which is that on 3rd day of October 2012 at Giathugu Location within Nyeri County murdered ELIZABETH WAMBURA MWAI.
2. He pleaded not guilty to the said charge and has now moved he court under the provisions of Article 49(h) of the Constitution to be released on bond pending hearing and determination of the case against him.
3. To assist the court in the absence of any affidavit by the prosecution in opposition to the bond application, I ordered for a prebail report which has now been filed in which the Probation Officer stated that the community may be hostile to the accused person who are unlikely to accept him back should he be released on bond for now and therefore his life may be at risk.
4. It must be pointed out that bond is now a constitutional right of every accused person and can only be denied if there are compelling reasons which must be provided by the prosecution.
5. Whereas the risk of the accused life may be a factor to be considered it should only be taken into account if there is evidence provided to support the same.
6. It should further be noted that Article 29 (c) of the Constitution provides as follows:
7. ***“every person has the right and security of the person which includes the right not to be-***
- 8.
9. ***(c) subjected to any form of violence from either public or private sources.”***
10. I therefore find that the reason given that the accused life might be at risk is not compelling reason to deny the accused bond.
11. Taking into account the fact that the accused faces a charge of murder wherein one of the sentence available if proved guilty is death I will grant the same bond on the following conditions:

a) Bond of Ksh. 500,000/- with two (2) surety of similar amount.

b) During the period of his trial the accused should attend mention before the Deputy Registrar of this court once after every 30 days at a date to be set by the said Deputy Registrar.

c) The accused shall not be in touch with the family of the deceased in any form during the period of his trial.

Dated, signed and delivered at Nyeri this 15th day of October 2014.

J. WAKIAGA

JUDGE

Court: Ruling read in open court in the presence of Miss Mwai for the accused and Mr. Njue for the state.

J. WAKIAGA

JUDGE