



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 70 OF 2013

WILSON MWANGI GITHINJI.....1ST APPLICANT

SIMON NDAMBARI GATUMU.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused **Wilson Mwangi Githinji** and **Simon Ndambari Gatumu** are charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars are that on the 11th day of June, 2013 at **Ngong Township** within **Nairobi County** murdered **Grace Njeri Lepaso**. When arraigned in court on 3rd July 2013, they denied the offence and were remanded in custody.

By their respective applications dated 16th May 2014 and 3rd June, 2014 they seek to be released on bail pending their trial which is set to start on 29th September, 2014. In their respective affidavits each applicant states that he will not interfere with investigations; that he has a constitutional right to be released on bail or bond pending trial; that there were no compelling reasons not to be released; and, that he will attend trial whenever required.

The State has opposed both applications vide the replying affidavit of **No. 43656 Corporal Ruth Wangechi** of Divisional C.I.D. Kajiado North who is the investigating officer in the case. She depones at paragraph 4 that the murder was committed at Siranga area of Matasia where both the applicants and the prosecution witnesses reside and that their release would cause the witnesses to fear to testify leading to a possible miscarriage of justice; that the applicants may be harmed by the community as the deceased person was a matriarch who was loved and held in high esteem by the said community.

Further she depones at paragraph 6 and 7 that there is sufficient evidence to prove the guilt of the applicants and the likelihood of securing a conviction was high; and that for this reason the applicants may abscond trial and flee the jurisdiction of the court. She further states that the two applicants fled the scene and were traced to Karatina (Nyeri County) and Kirinyaga (Kirinyaga County) respectively.

At the hearing of the application on 10th July 2014, **Mr. Ochako** for both applicants dismissed the replying affidavit of **Corporal Ruth Wangechi** stating that the averments were not borne of investigations and therefore not factual. **Mr. Konga** for the State relied on the replying affidavit underscoring the weight of evidence against the applicants. He also submitted that the accused were likely to evade trial having tried in the past to escape justice by fleeing to Karatina and Kirinyaga respectively.

I have considered the opposing affidavits and submissions. The Constitution under **Article 49(i) h** grants a right to bail to an accused person. However, the right is not absolute and may be curtailed by the court where there are compelling reasons. In granting or denying bail, the court considers whether or not an applicant is likely to attend his trial. In the present case, I am not persuaded that the applicants will attend trial if released. The applicants have by their antecedents of fleeing from the scene of the incident to Karatina and Kirinyaga respectively shown that they can easily evade trial if released. I consider this to be a compelling reason why they should be denied bail. Further, in the circumstances of this case, I consider that the interests of justice will be served in denying rather than allowing the applications. I further note that the trial is scheduled to start on 29th September 2014.

From the foregoing, I exercise discretion to deny the applicants bail. Their respective applications are dismissed.

Ruling delivered, dated and signed at Nairobi this 7th day of August, 2013

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk
.....: Applicant
.....: For the 1st accused/applicant
.....: For the 2nd accused/applicant
.....: For the State/respondent