



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE E025 OF 2020

PROSECUTOR.....REPUBLIC

VERSUS

MERCY NEKESA WAMBWIRE.....ACCUSED

RULING

The accused herein **MERCY NEKESA WAMBWIRE**, has applied to this court to be released on bail pending this trial. The application is dated 23.9.2020, and the same was heard in court on 16.10.2020. Mr. Ajulu, for the applicant made submissions that bail is a constitutional right. That the applicant would not interfere with the witnesses whom she does not know, and that she undertakes to come to court. Lastly, it was submitted that she is of youthful age, of meagre means and sickly.

The prosecution side has opposed this application. First on grounds that the accused, if released, would interfere with prosecution witnesses who were neighbours of the deceased and well known to the accused, who previously lived with the deceased. Secondly, that the accused is a flight risk, a fact proved by the fact that she was arrested outside deceased's house as she tried to escape. Also that her place of abode or place of employment remain unknown. And lastly, that the accused faces a serious offence of murder which attracts severe sentence in case of a conviction could be an incentive for absconding.

I have considered the submissions herein by both sides. Articles 49(1)(h) of the constitution of Kenya guarantees all accused persons the right to pre-trial bail. Same states;

“An arrested person has the right:

- To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

Whereas the above provisions declares a blanket right to bail to all accused, irrespective of the charges they face, the proviso therein is that where it is shown the existence of any compelling reasons, then the right to bail may be denied. These in simple terms are reasons good enough as to justify the denial of bail

Courts have held that some of the factors that could constitute compelling reasons are the following:-

- Whether the accused would turn up for his trial.***
- Whether the accused likely to interfere with witnesses.***
- The nature and seriousness of the charges.***
- Severity of the sentence in case of conviction.***
- Security of the accused in case he is released on bond.***
- Whether he has a fixed abode.***
- Public security, law and order.***

In deciding on the issue of whether or not to place the accused on bond, the court must consider first and foremost, the fact that the accused enjoys a right of presumption of innocence. The court must therefore weigh carefully this right of the accused and the collective interest of the community (**Republic Versus Danford Kabage Mwangi (2016)eKLR**).

The main consideration, however, remains whether the accused, if released on trial. In our instant, the prosecution has opposed bond on a number of grounds:

First, that the accused is likely to interfere with prosecution witnesses if released. From the submissions however, it has come out clearly, that accused does not stay at the same places as the prosecution witnesses. It has not been shown the level of acquaintance that accused enjoys with the witnesses. And the prosecution has not shown any evidence of such interference or an attempt at the same. In effect, the objection of the prosecution was based on unproved speculation.

It was further submitted that the accused is likely to abscond if released on bail. It is instructive to note that the accused was arrested within the vicinity where the incident occurred. It was not explained how in the circumstances one would conclude that the accused is a flight risk. As to her place of abode or employment, the court was not informed if the investigating officers made any attempts at knowing the same.

Lastly, it is obvious that the accused faces a serious charge which attracts severe punishment in case of a conviction. However, this on its own cannot be a compelling reason in view of the provision in Article 49(1)(h) that guarantees the right to bail to all accused persons.

The sum total of this is that the prosecution has failed to establish any compelling reason herein that could make this court deny the accused the right to bail. I accordingly therefore dismiss the prosecution objections. I allow the application of the applicant dated 23.9.2020 and order that the applicant (accused) may be released on bond on the following terms:-

i) A bond of Ksh.2 million with 1 surety of a similar amount.

ii) In the alternative, a cash bail of Ksh.200,000/=

iii) In case the accused deposits cash bail as per order (ii) above, the accused shall furnish and deposit particulars (phone number, copy of ID card) of at least 1 contact person.

iv) The accused is ordered never to contact any of the prosecution witnesses, directly or indirectly till this case is determined.

v) The accused will be expected to attend court at all times as may be ordered from time to time till this case is determined.

Orders accordingly.

D. O. OGEMBO

JUDGE

24.3.2022.

Court:

Ruling read out on line in the presence of the accused, Ms. Abunja for the accused and Ms. Joy for state.

D. O. OGEMBO

JUDGE

24.3.2022