



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 44 OF 2020

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

LNK..... ACCUSED

RULING

1. **LNK** (the accused) is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The deceased, the subject of the murder trial, was the son of the accused. The deceased was 2 years old at the time of his death.
2. The accused has applied for bail pending her trial. The application for bail was not opposed by the State.
3. The accused is 21 years old. On her arrest the psychiatrist diagnosed her as suffering from depression and entertaining suicidal tendencies. In the subsequent medical report by the psychiatrist dated 21st January, 2021 the accused was stated to be mentally stable. She pleaded not guilty to the offence of murder.
4. The accused is first born. She has four other siblings. The family is from a poor economic background. The accused had to drop out of School while at High school because of lack of school fees. She is unmarried and had the child, the deceased out of wedlock.
5. The accused has no previous conviction. The defence counsel filed submissions in support of the application for bail. The defence emphasized that the accused is entitled to be presumed innocent and should therefore be deprived her liberty without just cause.
6. **Article 49(1)(h)** of the Constitution provides the rights of an arrested person to bail. In the case **REPUBLIC VS. PETER MAINA KARIUKI (2016) eKLR** the court considered that provision of the constitution and further stated thus:-

“In Article 49 (1) (h) of the Constitution, it is provided that:-

‘An arrested person shall “be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.’

In considering that provision I am also guided by the case FADWECK MVAHE – VS- THE REPUBLIC MSCA Criminal Appeal No. 25 of 2005, which case was cited in REPUBLIC –v-JOSEPH WAMBUA MUTUNGA & 3 OTHERS [2010] eKLR as follows:

“...in considering the issue of the interest of the justice the paramount issues the court will consider include the likelihood of the accused attending his trial, the risk that if he is released on bail the accused person may interfere with the prosecution witnesses or tamper with the evidence, the likelihood of his committing another offence or other offences and also the risk to the accused person, if granted bail and he returns to his village where the deceased’s relative may harm him. In considering these issues the court may take into account among other things, such factors as the gravity of the offence the punishment likely to be imposed and indeed ... the accused is a sickly person.” (underlining provided)

7. There are no compelling reasons to deny accused bail pending trial. However, in view of the seriousness of the charge, the accused faces there is need to have sureties who can confirm accused attend to the trial.

DISPOSITION

8. The accused *LNM* shall be released on bail pending her trial on provision of two sureties of Kshs.500,000/= and her own bond of Kshs.500,000/=.

RULING DATED and DELIVERED at KIAMBU this 23rd day of SEPTEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Accused :- Present (Langata)

For Accused:- Ms. Ndegwa

DPP :- Mr. Kasyoka

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE