



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO. 15 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**EZEKIEL SAITABU NAKOLA.....1<sup>ST</sup> ACCUSED**

**MONICA MUTHONI MWANGI.....2<sup>ND</sup> ACCUSED**

**RULING NO. 2**

1. Monica Muthoni Mwangi (the 2<sup>nd</sup> accused) seeks *review* of the *refusal* of bail made on 10<sup>th</sup> November 2017.
2. Her *notice of motion* is dated 7<sup>th</sup> May 2019 and supported by her deposition and that of her husband, *Mathew Waweru Mwangi*.
3. There is also a fresh *pre-bail report* filed on 17<sup>th</sup> September 2019.
4. The centrepiece of the application is that the 2<sup>nd</sup> accused is a mother of three young children aged 15, 12 and 9 years. Since her incarceration, the minors have depended on her husband who has no meaningful source of income. Secondly, the applicant casts doubt on the veracity of the evidence in this case. Thirdly, she opines that the trial will be lengthy in view of the large number of witnesses. Lastly, she attacks the *bona fides* of a replying affidavit filed by the prosecution on 20<sup>th</sup> September 2017.
5. Her husband on the other hand deposes that one of the witnesses, *Corporal Katui*, is unreliable. He avers that he is struggling to bring up his young children single-handedly.
6. Learned counsel for the applicant, *Mr. Kamata*, submitted that from the fresh pre-bail report, only the family of the deceased is opposed to release of the 2<sup>nd</sup> accused. He suggested that the applicant can relocate to her parent's home.
7. Learned Prosecution Counsel, *Ms. Gichuru*, opposed the application. In her view, the motion should only be considered after some vulnerable witnesses have testified. They include the ten-year-child of the applicant and close family members.
8. Whether or not the charge of *murder* will be made out is too early to call. I thus refuse the invitation to assess the evidence of potential witnesses including that of Corporal Katui.
9. In the impugned ruling of 10<sup>th</sup> November 2017, the court (*Waweru J*), noted as follows:

[9]...that the 2<sup>nd</sup> accused was the deceased's daughter-in-law as she is married to one of the deceased's sons. I also note that they lived in the same compound.

[10] I further note most of the civilian prosecution witnesses are the deceased's sons (including the 2<sup>nd</sup> accused's husband) and also a ten-year-child of the 2<sup>nd</sup> accused

[11] I consider that the possibility of interference with the prosecution witnesses by the 2<sup>nd</sup> accused is not far-fetched. This is a compelling reason to deny her bail for the time being.

10. The original reasons for denial of bail remain valid. Neither the young child of the 2<sup>nd</sup> accused nor her husband has taken to the stand. Even if the 2<sup>nd</sup> accused relocates away from the *locus in quo*, she and her husband (who is also lined up as a witness) will still have access to crucial witnesses. There is thus a real likelihood of interference with evidence. I also remain alive that the applicant faces the grave charge of

murder.

11. I empathize with the conditions facing the minor children of the applicant but no good cause has been shown for review. The upshot is that the application by the 2<sup>nd</sup> accused dated 7<sup>th</sup> May 2019 is *dismissed*. I however direct that the trial be fast-tracked.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 25<sup>th</sup> day of February 2020.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

1<sup>st</sup> and 2<sup>nd</sup> accused persons.

Mr. Kamata for the 2<sup>nd</sup> accused/applicant.

Ms. Gichuru for the Republic.

Ms. Dorcas, Court Assistant.