



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. E007 OF 2020**

**LESIT, J**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PETER MUKHWANA MBUNDU.....ACCUSED**

**RULING ON BAIL**

1. The accused **PETER MUKHWANA MBUNDU** is facing one count of **murder** contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence are as follows:

**“Between 28<sup>th</sup> and 29<sup>th</sup> June 2020 at Gaza Area within Kariobangi South in Nairobi County murdered Elizabeth Wanjiku Muthoni alias Mama Yankee alias Wakido.”**

2. The accused was arraigned in court on 28<sup>th</sup> July, 2020 and the plea taken on 29<sup>th</sup> July, 2020. Subsequently the accused filed a Notice of Motion through his counsel dated 3<sup>rd</sup> August 2020. It seeks three prayers but only one is alive which is:

**“That this honourable court do admit the Applicant to bail under such terms and conditions that may be just and reasonable to grant.”**

3. Ms. Martha Waweru, learned defence counsel in her submissions relied on the Applicant’s affidavit sworn in support of the application and urged the court to grant the Applicant bond pending his trial before this court. Counsel urged that the accused was not a criminal, that he had no previous record and was entitled to bail.

4. Ms. Waweru in response to the State’s affidavit opposing bail urged that no proof was brought to prove that the accused habitually beat his wife as alleged neither was there any proof of any attempt on accused part to flee. Counsel urged further that there was no proof brought that the accused had threatened witnesses. She urged that accused had relatives in Nairobi and could have a place to live if he was granted bail.

5. Ms. Gikonyo learned Prosecution Counsel opposed bail to the accused on behalf of the State relying on the sworn affidavit of Inspector of Police Josphat Wafula, the Investigating Officer in this case. Counsel urged that they were opposing bail on grounds the accused is a flight risk, that he has threatened witnesses, that he had uncontrolled anger and finally that he had no fixed abode.

6. Before making a determination in this case I called for a Probation Report which was filed and which I will consider.

7. Bail is a constitutional right. **Article 49(1)(h)** provides that bail should be granted to an arrested or accused person unless there are compelling reasons not to. The court is empowered to give due consideration before exercising its discretion to either grant or deny bail. In any event there must be reasons given for the court’s decision.

8. The facts of the case as set out in I.P. Wafula’s affidavit are that the accused and the deceased lived together as husband and wife, and even had a 6 year-old child. The two had constant squabbles deceased a drunkard together.

9. The deceased is said to have died as a result of injuries inflicted on her at their home. The post mortem shows that the cause of death was asphyxia due to strangulation and a head injury due to blunt force trauma.

10. The Probation Officer’s Pre-Bail Report shows that both the family members of the deceased and the accused oppose the accused being

released on bail. Accused families cite the reason for that is that his life may be endangered as the emotions are still high and that this has caused them to live in fear.

11. The reason given by the deceased family why they oppose bail saying it was too early to grant him bail as they were still in mourning and are yet to come to terms with her death. Secondly they claim that they are fearful they may be attacked if the accused is released on bail.

12. The Probation also interviewed neighbours of the accused and deceased. The neighbours indicated that release of the accused on bail may pose a threat to potential witnesses with information some had received anonymous threatening calls. In addition, it was clear to the Probation Officer conducting the inquiries that both the family of the accused and the deceased have threatened retaliatory attacks against each other.

13. I have taken all the submissions by the defence and prosecution, as well as the Probation Pre-Bail Report and the Post Mortem Report filed herein. As observed in the Bail and Bond Policy Guidelines, at paragraph 4.9 thus:

**“the determination of whether there are compelling reasons that can justify the denial of bail should be made by evaluating whether or not the accused person will attend his or her trial. In practice, the courts have made this evaluation by considering the following non-exhaustive factors:**

**(a) to (j)...**

**(k) Public order, peace or security. Whether the release of an accused person will disturb public order or undermine public peace or security. Pretrial detention may be necessary to preserve public order where it is demonstrated that the public response to an offence is such that the release of the accused person would be likely to lead to a public disturbance.**

**(l) Protection of the accused person. Whether pretrial detention is necessary to protect the accused person...”**

14. Having analyzed the submissions and the reports, it is clear that the situation on the ground, especially in relation to the relationship between the deceased and the accused families and the neighbourhood where they live, may be volatile with threats of retaliation attacks and revenge. To buttress the issue further, I noted that both family members of the deceased and the accused were candid that they fear for their own lives. Those of the accused were even more candid saying that they would rather that the accused remained in custody.

15. These sentiments border on issues of security, both of the members of the accused and deceased family, including the accused himself. Most importantly, they border on public insecurity. There is obviously tension on the ground. Considering that the deceased death occurred only recently, and the rising tensions and emotions it is my view that the application for the release of the accused on bond should be shelved for a minimum of six months

16. In the result, the accused application to be released on bond is declined. The accused is at liberty to re-apply after a period of not less than six months from today.

**DELIVERED THRU’ TEAMS THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2020.**

**LESIT, J.**

**JUDGE.**

Delivered in the presence of:

Gitonga	Court Assistant
Ms. Ogweno	For the State
Ms. Waweru	For the Accused

Accused person present

**LESIT, J.**

**JUDGE.**

**22<sup>nd</sup> September, 2020**