



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. E013 OF 2020

MARY WAMBUI MBURU.....APPLICANT

ANN WANJIKU NJERI.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

Both accused's **MARY WAIRIMU MBURU** and **ANN WANJIKU NJERU**, have applied to this court that they be released on bail pending trial in this case. The counsel for the Defendants filed submissions in plea for bail. Basically, that bail is a constitutional right of every accused person, only to be denied upon proof of existence of compelling reasons. The applications were based on Article 49(1)(h) of the constitution. Both gave undertakings that the accused shall abide by any conditions that the court would place on the grant of bail.

The prosecution has, however opposed this application for bail. First, on the ground that the accuseds and the witnesses are personally known to each other as they stay in the same neighbourhood. And so, there is a likelihood of accused interfering with the witnesses if released on bail.

Under Article 49(1)(h), the right to pre-trial bail is accorded to all accused persons irrespective of the nature of the charges they are facing. The same right may be denied if the prosecution proves the existence of any compelling reason i.e, reasons that are good enough as to justify a denial of the right to pre-trial bail.

In this case, the prosecution has raised only 1 ground in opposing release of the accused's in bail. That they are likely to interfere with the prosecution witnesses who are well known to the accused and who also stay in the same neighbourhood. The fact that the accuseds and the unnamed witnesses known each other and stay in the same neighbourhood is conceded by the defence sides.

But can this alone be a compelling reason enough for the constitutional right to bail to be denied to the accused? I do not think so. In the case of Republic versus Richard David Alden (2016)eKLR, the Hon. Lady Justice Lesiit determining on this issue, held;

“for the prosecution to succeed in persuading the court on this criteria (of interference), it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct indirect incriminating communication between the accused and witnesses..... at least some facts must be placed before court, otherwise it is asking the court to speculate.”

I stand guided by this finding. Basically, that there must be some evidence shown to court, of the alleged interference. Failure to show such evidence to court therefore leaves the allegation of likelihood of interference with witnesses an unproved fear which, respectfully cannot amount to a compelling reasons.

I accordingly do not find any merits in the objection raised by the state to the applications for bail by the accuseds. I dismiss this objection, and order that both accused 1 and 2 may be release on bond on the following terms:

i) Each accused to be released on a bond of Ksh.1 million with 1 surety each of a similar amount.

ii) In the alternative, each accused may be released on a cash bail each of Ksh.200,000/=.

iii) Accused are ordered, upon release, never to interfere with and or contact any prosecution witness, either directly or indirectly till this case is determined.

iv) Each accused to furnish specific details of where they will reside upon reason, including relevant phone numbers.

v) They are ordered to attend court of all times as may be ordered by the court till this case is determined.

Orders accordingly.

HON. JUSTICE D. OGEMBO OGOLA

23RD OCTOBER 2020

Court:

Ruling read out in open court (online in presence of the accused, Mr. Farah for accused 1 and holding brief for Mr. Abenga for accused 2 and Ms. Akunja for the state.

HON. JUSTICE D. OGEMBO OGOLA

23RD OCTOBER 2020