



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO 31 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

AGNES WAGIABI MUGWERU.....1ST ACCUSED

BONIFACE MUGIRA MUTHOMI.....2ND ACCUSED

R U L I N G

1. **Agnes Wagiabi Mugweru** (The 1st Accused) and **Boniface Mugira Muthomi** (the 2nd Accused) seek that they be granted bail pending their trial. Both are charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The deceased in this case was estranged husband of the 1st Accused.

2. The pre-bail probation report of the 1st Accused is not favourable to her release on bail. Her own children are not willing to house her in the family home and object to her being granted bail. They say they are still mourning the death of their father. The local administration is also of the view that the wider community is against her being granted bail.

3. The pre-bail probation report of the 2nd Accused shows that his family is supportive of him being granted bail and they are willing to stand surety for him.

ANALYSIS AND DETERMINATION

4. The offence that both Accused face is grave. That fact needs to be considered as I determine whether to grant the Accused persons' bail. This indeed is what was stated by the court in the case **Republic –v- Robert Nzilu (2018) e KLR** thus:

*“10. Gravity of the offence as a consideration was appreciated by Mbogholi Msagha, J in **Criminal Application No. 319 of 2002 Priscilla Jemutai Kolonge vs. Republic** (unreported) at page 3, wherein he held as follows:*

“However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.”

5. Article 49(1) (h) of the Constitution provides that an arrested person has a right to be released on bond or bail pending charge or trial. In the case **Republic -v- Fredrick Ole Leliman and 4 Others (2016) e KLR** the court considered how an application for bail should be received by the court thus:

“The question of bail is sometimes misunderstood. When a man is accused he is nevertheless still presumed to be innocent and the object of keeping him in custody prior to trial is not on the theory that he is guilty but on the necessity of having him available for trial. It is proper that bail should be granted when the Judge is satisfied that the bail will ensure the accused appearing at his trial.”

6. Having considered the reports placed before me I find that both Accused person are entitled to be granted bail there being no compelling reason to deny them bail. I will however take into consideration the gravity of the offence in setting out the terms of bail.

7. Accordingly, I grant the following orders

(a) Both Accused shall be released on bond of KSh.3 million with two sureties of like sum.

(b) The Accused shall not interfere with the prosecution's witnesses.

SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER 2020.

MARY KASANGO

JUDGE

18th December 2020

Before Justice Mary Kasango

C/A: - Kevin

1st Accused - **Agnes Wagiabi Mugweru**

2nd Accused – **Boniface Mugira Muthoni** – Present

For Accused – 1st Accused - Nyakeri

For 2nd Accused – Mr. Denise Otieno

For the State - Mr. Kasyoka

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE