

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO 18 OF 2019

JANELUCY NDATA GITAU..... ACCUSED

VERSUS

REPUBLIC..... RESPONDENT

RULING

1. **Janelucy Ndata Gitau**, the Accused herein is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. In her affidavit sworn in support of her bail application filed on 11th June 2019, the Accused person deposes that she is not a flight risk; will not interfere with witnesses and is engaged as a teacher at Githioro Primary School. **CPL John Warui** of DCI Githunguri swore an affidavit in opposition to the bail application. On grounds that the Accused will interfere with witnesses who are related to the deceased, as in fact the Accused's son has allegedly started to do, and that due to the existing animus in the extended family of the deceased against the Accused, it is in her interest to remain in safe custody. I have

2. The Court has considered the affidavit material and arguments by respective parties which, by and large rested upon the said material. Article 49(1) (h) of the Constitution provides that an accused person is entitled to be released on bail or bond on reasonable conditions unless there be shown compelling reasons militating against such release. The primary consideration in granting bail is whether the Accused person will attend his trial. See **Job Kenyanya Musoni v R [2012] e KLR**. Even so, other factors are relevant, including the nature of the charges; strength of the evidence supporting the charge; gravity of the punishment prescribed for the offence; previous criminal record; likelihood of interfering with witnesses; likelihood of further charges and public safety or the Accused person's own safety. See **R v Danson Mgunya & Another (2008) e KLR**. The duty lies with the DPP to present cogent evidence why bail should be declined. Moreover, the Accused person is presumed innocent until proven guilty.

3. The DPP has not furnished evidence in support of the allegation that the Accused and her family are likely to interfere, or are currently interfering with witnesses, whose identities were not revealed. As stated in the **Mgunya Case**, the standard of proof of compelling reasons to deny bail is on a balance of probabilities (see also **R v Mohamed Ahmed Omar [2010] e KLR**). Concerning the second objection, the court having considered the contents of the affidavit of the Accused as well as the prebail report notes that there may already exist tensions between the Accused's nuclear family and that of the deceased, no doubt arising from his murder but also over issues related to succession. It may well be that the Accused's safety within that scenario cannot be guaranteed at the moment. A sister of the Accused has, according to the prebail report, pledged to host the Accused at her Thika home during the pendency of the case, or at least in the period immediate to her release .

4. Of more concern to this court is the fact that the Accused is well advanced in years, and according to her counsel and the prebail report suffers from a mood disorder, namely bipolar disorder. In my view, in the absence of strong and cogent grounds, it would be unhelpful and inimical to the Accused's health to keep her in custody during the pendency of the trial. In the circumstances, the court will grant bail to her subject to the following conditions:-

a) The Accused person to execute a bond of KShs. 500,000/=

b) In addition to (a) the Accused to furnish a surety in the sum of KShs.500,000/=

c) The Accused person, is to reside at Thika as proposed by her sister or at any other place removed from her home at Kirura village, Komothai, Githunguri during the pendency of this case, or until further orders of this court

d) The Accused person and her family are warned to desist from any conduct that is aimed at threatening or interfering with any witness, and specifically to avoid communicating with or contacting either directly or indirectly any of the prosecution witnesses. Any proven breach of this condition will lead to the cancellation of the Accused's bond.

DELIVERED AND SIGNED AT KIAMBU ON 13TH DAY OF AUGUST 2019

C.MEOLI

JUDGE

In the presence of:

The Accused

Mr. Kasyoka for DPP