



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO. 30 OF 2018

THE STATE.....PROSECUTOR

VERSUS

LILIAN SYOKAU MULWA.....ACCUSED

RULING

1. The accused person through **Mumbi Muritu Advocates** brought a Notice of Motion dated 3rd June, 2019 praying that she be released on bail/bond pending hearing of this case. The application is based on the following grounds:

a. That the accused person has a constitutional right to bail pending the hearing of this case.

B .That the offence is bailable.

2. The application is supported by the affidavit of the advocate for the applicant sworn on 3rd June, 2019. He depones that the accused instructed him to make the application and she has assured that she will be available for trial when required to do so and that she will abide by any condition set by court.

3. The State did not oppose the application and the court directed for a pre- bail report to be availed.

4. I have considered the application. Bail pending trial as a constitutional right as provided under **Article 49 (1) (h)** of the Constitution is provided as follows:

“An arrested person has the right:-

To be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”

5. Bail pending trial is a principle of fair trial. An accused person is presumed innocent until the contrary is proved. **Article 50 (2) (a)** provides:

“Every accused person has a right to a fair trial which includes the right to:-

1. To be presumed innocent until the contrary is proved.”

6. The right to bail can only be denied if the State proves that there are compelling reasons not to grant bail. The burden is on the prosecution. In the case of the **Republic v Danson Ngunya & Another (2010) eKLR** High Court stated:-

“In my judgment, the practice should never be to require the State to prove to the satisfaction of the Court that in the circumstances of the case the interest of justice requires the accused to be deprived of his right to be released from detention. The burden should be on the State and not the accused. He who alleges must prove. That is what we have always upheld in our courts. If the State wants the accused to be detained pending his trial then it is up to the State to prove when the Court should make such an order.....

7. The State did not oppose the release of the accused on bail. I have considered the Judiciary Bail Policy guidelines. The Policy guidelines defines a bail report as follows:

“A social enquiry report based on information generated about the background and community ties of an accused person, and its purposes are to verify information provided to Court by the accused person, to assess the likelihood that the accused person will appear for trial and enable the Court to impose reasonable bail terms and conditions.”

At Chapter 4:26 it is stated:

“The Court may request for a bail report where it considers that it does not have sufficient information to make a fair and appropriate bail decision including the following instances:

- a. Where there is doubt on the information on the accused person relating to the grant of bail;***
- or***
- b. Where the prosecution objects to bail with plausible reasons; or***
- c. Where the accused person has been given bail but fails to meet bail terms and seeks review of those terms; or***
- d. Where the victim of the crime contests the grant of bail or applies for review of bail conditions, or***
- e. On the Court’s own motion where it deems necessary.***

8. The bail report has been availed to court and the same has observed that the accused is a 34 year old Kamba lady and a single mother of two young school going children and her family members are ready to secure sureties for her. It was opined that the accused had a fixed place of abode and her security is not compromised. The family of the deceased is opposed to her release on bail but no reason were given by them.

9. In conclusion, having considered the circumstances relating to the case, I find that there being no compelling reason proved to deny the accused person bail, I am of the view that she should be allowed to enjoy the constitutional right to bail. I order that the accused be released on a bond of Kshs.1,000,000/= plus one like surety of like sum pending trial. The accused is directed not to interfere with the witnesses and to attend court at all times without fail and in default the bond shall stand cancelled and she together with her surety called to account.

Orders accordingly.

Dated and delivered at **Machakos** this **30th** day of **September, 2019.**

D. K. Kemei

Judge