



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO. 17 OF 2017**

**REPUBLIC.....PROSECUTOR**

**-VERSUS -**

**MARY NJERI WANJIKU.....ACCUSED**

**RULING**

1. The accused **MARY NJERI WANJIKU** faces one count of murder contrary to **section 203** of the **Penal Code**.
2. The accused was arraigned in court on 24<sup>th</sup> April, 2017. Plea was taken on 3<sup>rd</sup> May, 2017 and case eventually fixed for hearing on 23/24/25<sup>th</sup> July, 2018.
3. Even though the court did not order for Probation Officer Report, on 15<sup>th</sup> January 2018 a Probation Officer appeared in court and sought more time to file a Report which was granted. The Report was filed on 29<sup>th</sup> January, 2018. That was record time.
4. On 5<sup>th</sup> February 2018 the Prosecution led by Ms Onunga did not oppose bail. The Learned Prosecution Counsel submitted that the investigating officer had informed her that the accused was not directly involved in the murder. Counsel urged that those directly involved were still at large and that any grant of bond should keep that factor in mind.
5. Mr. Ochako for the accused urged the court to grant the accused free bond on the basis of submissions by the prosecution that accused was not directly involved in the murder. Furthermore, Counsel urged, accused was not a person of means and had children who were under the care of her mother.
6. I have considered the application for bail. The State has not opposed bail but has indicated other accomplices are at large. On the part of the defence I have been given the accused personal circumstances that she is a single mum and that currently her mother is taking care of the children. I have also been asked to give low bond terms as accused is not a person of means.
7. There was nothing said by the prosecution to give insight into the family of the deceased and what their views in regard to bail are. Thankfully Abina, Probation Officer filed a report which contains victim impact statement.
8. According to the mother of the deceased, she knows the accused and was clear that there was no bad relation between her and her late son. She went further to say that the deceased even took care of the accused children whenever the accused delayed to return home at night including feeding them and giving them a place to sleep. The mother of the deceased feels accused is a flight risk.
9. I have considered the circumstances of the case as it comes out from those who were interviewed by Abina, the Probation Officer. The picture created is that the accused was drunk on the night in question. She was agitated over some property she claimed a neighbour had stolen. She made it clear she wanted it back.
10. The accused had no grudge against the deceased. In fact what comes out clearly is the fact that the deceased would occasionally feed the children of the accused and even give them a place to sleep every time the accused stayed away late at night.
11. The prosecution has submitted that the accused was not directly involved in the deceased death and that therefore they do not oppose bail. I got curious to find out why then she was charged with this offence.
12. The very first witness statement in the prosecution bundle clearly shows that the accused summoned some people to the scene to deal with the person who had allegedly stolen from her (accused). It is misleading and incorrect to say accused had nothing to do with the

deceased death.

13. I find the accused a flight risk, reason being she is the only connection to the persons she summoned to carry out the act, culmination of which led to deceased death. Those persons are still at large. To release the accused given her personal antecedents of being a lifist to say the least would not preserve the case or meet the ends of justice. I find that the interests of justice dictate against granting bail to the accused.

14. Accordingly, the accused is denied bail and should remain in custody until this case is heard and finalized or otherwise terminated.

**DATED, SIGNED AND DELIVERED THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2018.**

**LESIT J**

**JUDGE**