



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 21 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DORCAS OMBASA MUKIIRA.....ACCUSED**

**RULING**

Dorcas Ombasa Mukiira, the accused herein, is facing a charge of murder brought under section 203 as read with section 204 of the Penal Code. It is alleged in the particulars of the information dated 16<sup>th</sup> May 2017 and filed in court the same day that on 29<sup>th</sup> April 2017 at Kabiria in Dagoretti Sub-County within Nairobi County the accused murdered Lucy Wesonga Wamalwa. The accused has denied committing this offence.

Through a Chamber Summons dated 28<sup>th</sup> February 2018 and filed in court on the same date, the accused through her legal counsel Mr. Kanyonge, advocate instructed by M/s Mburugu & Kanyonge Associates is seeking to be admitted to bail pending the hearing and determination of this case. The application is anchored on Article 49 (1) (h) of the Constitution of Kenya 2010, Sections 123 and 124 of the Criminal Procedure Code and other enabling provisions of the law. The application is supported by an affidavit sworn by the accused. The accused has advanced several grounds in support of her application for bail including that she is not a flight risk and that bail is a constitutional right under Article 49 (1) (h) of the Constitution of Kenya.

The prosecution is not opposed to this application but asked this court to call for pre-bail report and to set conditions of bail that the accused does not visit the scene of crime and that she does not interfere with witnesses. I have called for the report which was filed on 25<sup>th</sup> April 2018. I have read it. I note that the members of the family of the victim did not avail themselves for an interview. There is an indication that a sister of the deceased promised the Probation Officer that she would get back to the Probation Officer but failed to do so.

I note from the probation report that the family of the accused is supportive of her release on bail and one of the uncles is willing to stand surety for her. I further note that an aunt of the accused has promised to accommodate the accused once released on bond at her aunt's residence in Kaptembwa Estate in Nakuru.

Bail is a constitutional right under Article 49 (1) (h) of the Constitution of Kenya 2010. A reading of that Article is clear that the right to bail is not an absolute one. The trial court is empowered to exercise its discretion to grant or deny bail where there are existing compelling reasons. In this application the State through the Office of the Director of Public Prosecutions is not opposed to the accused being released on bail subject to the conditions I have stated above. There are various factors that must be taken into account in determining whether to admit an accused person to bail or to decline. These include whether the accused is a flight risk, whether he/she will interfere with witnesses, whether he/she will commit another crime while on bond, severity of the sentence, strong case against the accused and whether he/she will honour the terms and conditions of bail set by the court. It is settled that the paramount consideration in admitting an accused to bail is whether he/she will turn up for his/her trial once released on bail (see **Watoro v. Republic [1991] eKLR**).

I have considered this matter and I find that I have no reason to decline this application. I hereby grant the application and order that the accused shall be released on bond on the following terms:

- 1. The accused shall execute a bond of one million Kenya Shillings (Kshs 1,000,000) with one surety of similar amount.***
- 2. In the alternative the accused is at liberty to deposit with the Registrar of this Court a sum of Kenya Shillings Three Hundred Thousand (Kshs 300,000) as cash bail.***
- 3. She is restrained from visiting the scene of crime and doing anything or acting in any manner that may jeopardize this trial.***
- 4. She shall attend court at all times she is required to do so until this case is heard and determined.***

Orders shall issue accordingly.

**Delivered, dated and signed this 30<sup>th</sup> day of April 2018.**

**S. N. Mutuku**

**Judge**