



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 35 OF 2018**

**REPUBLIC.....PROSECUTOR**

**Versus**

**DOREEN NGUGI.....ACCUSED**

**RULING**

**Bail**

[1] **Doreen Ngugi**, was arraigned in court on 2<sup>nd</sup> May 2018 for the offence of murder to which she pleaded not guilty. Counsel for the accused sought for bail to be granted to the accused as they commence the process of plea negotiation. Consequent thereto, the court called for pre-bail report.

[2] The pre-bail report was accordingly filed. The probation officer's conclusion is that the accused is not suitable for release on any bond terms at the moment for the home environment was still volatile. The supporting information was given to be; that the victim was the accused's maternal aunt, and after the incident the accused's mother's house was burnt down and she was chased away together with her children from the compound. Her mother was also warned not to attend the burial of the victim unless she also wanted to be buried. The accused's mother is willing to bail her daughter out but she too was in prison for selling alcoholic drinks without a license- at the time of the interview. The community is of the view that it was too soon for the accused to be considered for bond and also feared for her safety.

[3] I will weigh these factors against the high threshold provided in the Constitution, to wit, that only the presence of compelling reasons will deny the accused his right to bail under **Article 49(1) (h)** of the Constitution which provides: -

*“An accused person has the right –*

*...*

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

[4] I am also aware that, under Article 50(2) (a) of the Constitution:

*“(2) Every accused person has the right to a fair trial, which includes the right—*

*(a) to be presumed innocent until the contrary is proved;..”*

[5] Are there compelling reasons not to release the accused on bail? I have lamented before, and I will continue to do so for as long as this ugly monster stalks the course of justice- the tendency of killing accused persons when released on bail. In a civilized society such traits are savage and backward. Alas! The threat to the safety of the accused by the community which should ordinarily provide safety and nurturing of people has become a relevant consideration in the grant of bail in this area. The court has had bizarre incidents where an accused was killed by the public after he was released on bail; others have been assaulted viciously. The context therefore has increasingly made the security of the accused to be a paramount consideration in bail applications. In any event, where the security of the accused cannot be guaranteed, bail may be denied. I believe in such circumstances, accused's attendance in court cannot be guaranteed also. On that account, bail will also be denied. See **Chesoni J (as he was then) in the case of NGANGA vs. REPUBLIC [1985] KLR 451** that:-

*“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but*

*before that right is granted to the accused, there are a number of matters to be considered. Even without the constitutional provisions ... generally in principle and because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless there are substantial grounds for believing that;*

*a) the accused will fail to turn up at the trial or to surrender to custody or;*

*b) the accused may commit further offences; or*

*c) he will obstruct the course of justice.*

*The primary purpose for bail is to secure the accused person's attendance to court to answer the charge at the specified time. I would therefore agree with Mr Karanja that the primary consideration before deciding whether or not to grant bail is whether the accused is likely to attend trial."*

[7] In this case, the accused is charged with the offence of murdering her maternal aunt. Her family is angered by her act and they expressed that anger by burning down her mother's house and chasing the accused away. The community is also said to be hostile to the accused. In such situation, if she is released on bail I can only anticipate the worst. I note that there is no alternative and safe place for her safety that was identified. Her mother may also not be available or even offer any guarantee for her safety or guidance. Therefore, as the home environment is still volatile and her safety cannot be guaranteed, I will deny her bail. However, should circumstances change, the accused may renew her application for bail. For now, she shall remain in custody. It is so ordered.

**Dated, signed and delivered in open court at Meru this 26<sup>th</sup> day of July 2018**

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**F. GIKONYO**

**JUDGE**

In the presence of:

Mr.Namiti for State

Mr. Munene for Nyenyire

Accused – present

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**F. GIKONYO**

**JUDGE**