



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 13 OF 2017

REPUBLICPROSECUTOR

VERSUS

CEDRIC LISAMULAH BIREMBO.....ACCUSED

RULING

1. The accused **CEDRIC LISAMULAH BIREMBO** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which are that on the 15th day of March, 2017 at unknown time at Faith Medical Clinic Matopeni, Kayole within Nairobi County murdered **DORIS OPUTINDA GAMBWA**.

2. He pleaded not guilty and by a Notice of Motion dated 30/3/2017 applied to be released on reasonable bond terms. The application was supported by an affidavit sworn by the applicant in which it was deponed that he was a family man whose family depended on as a sole bread winner with a fixed abode and was therefore not a flight risk.

3. In response to the said application the State through **PC MAURICE MUNANI** stated that the deceased went to Faith Medical Clinic operated by the accused for treatment where she died. It was stated further that the post mortem conducted on the body of the deceased revealed that the same died due to failed procured abortion and that the accused was confirmed not to be a registered clinical officer.

4. It was deponed that there were likelihood of various charges being preferred against the accused and therefore there was possibility of the same absconding and or intimidating potential witnesses whose statements have been provided to the accused.

5. To assist the court in determination of this application and in compliance with the provisions of Bail and Bond Policy Guidelines and Victim Protection Act, the court ordered for a pre-bail report in which it was stated that the accused is married with three children in school with the last born being one year old. On the victim impact statement it was stated that the deceased was aged 30 years old, a mother of four children one who stays with his biological father while three lives with their maternal grandfather.

6. It was stated that the deceased family had accepted what happened despite the pain of losing a loved one and had moved on as a family and therefore were not opposed to the accused being released on bond.

SUBMISSIONS

7. On behalf of the prosecution it was submitted that more investigations were being carried out against

the accused and that the situation on the ground was volatile. It was further submitted that the accused is likely to abscond since he was operating unlicensed clinic. On behalf of the accused it was submitted that the pre-bail report did not support the prosecution's submissions that the ground was volatile and that even if it was, that should not be a ground to deny the applicant his constitutional right to bail and reference was made to the case of **REPUBLIC vs CYRUS MWANGI KIMUNYI High Court of Kenya at Kerugoya CR Case. No. 13 of 2014.**

ANALYSIS AND DETERMINATION

8. Under Article 49(1) (h) bail is now a constitutional right of every accused person which can only be denied where there are compelling reasons to be advanced by the prosecution on a balance of probability. In this matter the State had submitted that the accused is likely to intimidate witnesses but has failed to provide the particulars of the witnesses who are likely to be intimidated by the accused. The State has further submitted that the accused person is charged with a serious offence but it must be pointed out that the nature of the offence the accused is charged with on its own is not a ground upon which the court can deny him his right to bond.

9. From the material provided by the State I find and hold that the same has failed to provide enough compelling reasons to enable the court to deny the accused his constitutional right to bail.

10. Having taken note that the accused faces a charge of murder wherein the deceased lost her life and balance the lost to right to life against the accused person's right to liberty during trial I am of the considered view and hold that the accused ought to be released on the following terms.

a) Bond of Kshs. one million (1,000,000/-) with two sureties of similar amount.

b) During the period of his trial the accused shall report to the Officer Commanding **Umoja Police Station once after every 60 days** at a date to be set by the said officer upon the release of the accused on bond.

DATED, DELIVERED and SIGNED at Nairobi this **22nd** day of **May**, 2017

.....

J. WAKIAGA

JUDGE

In the presence of:-

..... *for the State*

..... *for the accused*

Accused

..... *Court clerk*