



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.69 OF 2017**

**REPUBLIC.....PROSECUTOR**

**Versus**

**JANICE GATWIRI BAABU.....APPLICANT**

**RULING**

[1] The accused person is charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code CAP 63 of the Laws of Kenya. He has now sought to be released on bail/bond pending the hearing and determination of this case. The State did not seem to oppose the application for bond, save for Mr. Mungai Learned State Counsel, urging the court to call for pre bail report before considering the application.

[2] According to a pre bail report filed in court, local administration as well as the members of the community who were interviewed welcome the idea of her release on bond. Her paternal aunt and maternal uncle also welcomed the idea. They said that family members will solicit help to raise any bond or bail posted for her. The accused also guaranteed that she will attend court at all times as will be required by the court. except, however, the deceased family as would be naturally expected was opposed to release of the accused person on bond.

[3] I have considered this application. Needless to state that, by dint of the Constitution of Kenya, 2010, all offences are bailable. More specifically, Article 49 (1) (h) thereof provides that 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. There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Thus, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution. I need not over-emphasize these matters except to cite the case of **R vs.JOKTAN MAYENDE & 3 OTHERS [2013] eKLR.**

[5] Applying the test, the State was not opposed to the release of the accused person on bond. Similarly, the pre bail report did not reveal any compelling reason not to release the accused person on bond. Accordingly, in the absence of compelling reason, under article 49(1) (h) of the Constitution, nothing prevents this court from granting the accused bail. As such, the accused person may be released on paying cash bail of Kshs. 100,000 or upon signing of a personal bond of Kshs 200,000 with a surety of a similar amount. It is so ordered.

**Dated, signed and delivered in open court at Meru this 22<sup>nd</sup> day of November, 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Namiti for State

Mr.Igweta Advocate for Mr.Ndubi advocate for accused.

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**F. GIKONYO**

**JUDGE**