

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

HIGH COURT CRIMINAL CASE NO. 53 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

MELAB OBISA KILETA.....ACCUSED

RULING

1. Melab Obisa Kileta (the “Accused Person”) is charged with murder contrary to section 203 as read together with section 204 of the Penal Code. She is accused of unlawfully killing John Muturi Maina on 5th October, 2017. She pleaded not guilty to the charge.

2. The Prosecution has opposed the pre-trial release of the Accused on bail or bond on the argument that the Accused Person is a flight risk. Cpl Charles Ndege filed an affidavit in opposition to pre-trial release. He deponed that the alleged offence occurred on 05/10/2017 at Kimende village in Kiambu County. However, Cpl. Ndege deponed that soon thereafter, the Accused Person, who was named as a person of interest in the homicide of the Deceased, absconded. It was only upon investigation that it was established that she had travelled to Handidi village in Kakamega County. She was only arrested with the help of a Police Informer on 27/10/2017 – more than three weeks after the incident.

3. Given these circumstances, the Prosecution is convinced that the Accused Person is a flight risk and will likely abscond if released on bail.

4. On her part, the Accused Person, through her Counsel, says that the Accused just happens to come from Kakamega and she went home. Since she must be presumed innocent until proven guilty, the fact that she went to Kakamega County cannot be used against her.

5. Bail is a constitutional right enshrined in Article 49(1)(h) of the Constitution. An Accused Person can only be denied bail if there are compelling reasons. The Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Finally, our emerging jurisprudence is clear as to the kind of evidence needed to establish the “compelling reasons”: the evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient. See, for example, *R v Muneer Harron Ismail & 4 Others [2010] eKLR*.

6. Using the Compelling Standard Test, I have formed the opinion that the Prosecution’s fears that the Accused Person is a flight risk is warranted. It is not denied that the Accused Person disappeared after the incident. It took more than three weeks and the help of an informer to arrest her. It does not in any way negate the Accused Person’s presumption of innocence to say that ordinarily a person does not suddenly disappear from her place of abode after a homicide without trace. It is, therefore, my view, that the Prosecution has established well-founded fear that the Accused Person may abscond if she is released on bail.

7. This well-founded apprehension that the Accused Person might not turn up for trial coupled with the seriousness of the charge the Accused Person is facing is sufficient to give the Court pause that there is a real likelihood that the Accused Person might abscond. That is the single most important factor in determining whether to grant bail or not and constitutes a compelling reason to deny bail. On that score, bail is denied. However, the case shall be listed for hearing on a priority basis on account of this denial of bail. The Accused Person shall continue to be held in custody during the pendency of the case or until the

Court reconsiders this bail decision.

Dated and delivered at Kiambu this 21st day of December, 2017.

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JOEL M. NGUGI

JUDGE