



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

CRIMINAL CASE NO. 43 OF 2016

REPUBLICPROSECUTOR

V E R S U S

REGINA WAMBUI NJOROGE..... ACCUSED

RULING

1. The accused **REGINA WAMBUI NJOROGE** is facing one charge of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence are that on 18th May, 2016 at Umoja II Estate Embakasi District in Nairobi County the accused murdered SNW, a child of 8 years of age.
2. The accused was arraigned in court on 30th May, 2016 and pleaded not guilty to the charge.
3. The court prompted the prosecution to file an affidavit if the State was opposing bail to the accused during the mention of the case on the 10th October, 2017. The affidavit was finally filed on 6th November, 2017.
4. I have perused through the affidavit. It has been sworn by P.C. Yvonne Anyango of DCI BuruBuru. The affidavit has procedural errors for instance where the deponent identified herself a one of the male gender which is incorrect. It also bears an error of fact where the deponent avers that she has read and understood the bail application by the accused while in fact none has been filed.
5. The deponent avers that she took over the investigations of the case from CPL Ouma on the 20th March, 2017. She deposes that the accused had been employed to look after the deceased who was 8 months old by then. That by the time the incident occurred the accused had worked only for 2 days.
6. PC Anyango deposes further that after committing the offence the accused tried to escape but was restrained by members of public who arrested her. PC Anyango concludes by stating that the accused is a flight risk. She deposes further that the accused is likely to interfere with the key witness who happens of be her sister.
7. Ms Onunga for the prosecution reiterated the averments in the affidavit of the Investigating Officer. Counsel submitted that the accused after committing the offence was running away with belongings of the mother of the deceased when the death was discovered. Learned Prosecution Counsel concluded by saying that the key witness in this case is a sister of the accused and that the accused is likely to interfere or compromise or influence her evidence to her favour.
8. Before Ms Onunga made her submissions, Mrs. Kinyori Learned Defence Counsel made an oral

application for the accused to be released on bail. Counsel submitted that the accused should be regarded innocent until proved guilty. Counsel urged that the accused was 20 years old and came from a humble family.

9. Mrs. Kinyori submitted that the accused did not know the witnesses in the case and further that she had no capacity to interfere with them. Counsel urged that the accused was not a flight risk as she had no passport.

10. Mrs. Kinyori urged further that once released the mother of the accused would take charge of her to ensure that she lives with her at home until the case is finalized. Counsel urged that the accused had assured her that she would be of good character and would abide by the bond terms the court will give in this case.

11. After Ms. Onunga the Learned Prosecution Counsel stated that the key witness was a sister of the accused, Mrs. Kinyori said that she was unaware of the relationship between the accused and the key witness. Counsel urged the court to find that the relationship was not enough proof that the accused would interfere with the witnesses. Counsel urged that statement could not be altered as it was on record and besides the prosecution had ways of dealing with witnesses if they were interfered with.

12. The court asked for a Pre-Bail Report which the Probation Department through Mr. Ayuma A. Otukho filed on 11th December, 2017. I have perused the report. It shows that the accused is from a single parent home of a mother and four siblings who are poor economically. It shows that the accused dropped out of school due to poor performance.

13. I tried to understand the attitude of the accused towards the crime from the Probation Report but I found nothing to guide. What I have noted is that the accused is in a hurry to be released on bail so as to assist her mother care for the family.

14. There is a response from the mother in which she pleads with the court to give reasonable bond terms which they will be able to afford so as to enable accused support her resources wise.

15. There is a victim impact statement included in the Report. It was from the parents of the deceased. They expressed that they had not recovered from the trauma of losing a child to a person hired specifically to take care of her. They also expressed fear that accused may re-offend if released on bail based on the fact she had been with the family for only four days before the incident. They also had unverified information portraying the accused as danger to society having had attempted a similar act in the past.

16. The Probation Officer Mr. Otukho did not commit himself whether bail was recommended or not.

17. The **Constitution 2010** under **Article 49(1)(h)** gives an accused person the right to be released on bail on reasonable bail and bond terms unless there are compelling reasons to deny bail.

18. The primary consideration is whether the accused will appear for her trial if granted bail. The factors to consider are set out in the Bail and Bond Policy Guidelines, even though not exhaustively.

19. The prosecution has opposed bail on grounds of the likelihood of the accused interfering with the key witness due to the relationship between the accused person and that potential witness. It is not disputed that accused younger sister is a key witness in this case. In fact that witness was also arrested together with the accused and held for some time before being released after making a statement with the police.

20. In **Rep. vs. Richard David Alden Criminal Case No. 48 of 2016** I ruled that mere relationship between accused and potential witnesses especially where it was not final was not sufficient to deny Bail. In this case the relationship between accused and the witness is a blood relation. I considered the added fact that the potential witness is a younger sister of the accused. I find that given the facts and circumstances of this case, there is a real possibility of interference. The best way to safeguard same is to

decline bail until the evidence of that witness is taken.

21. The prosecution has also opposed bail on grounds accused is a flight risk and may not appear for trial. The basis of that argument was the allegation that the accused had packed, changed clothes and was leaving after the act when the sister of the mother of the deceased walked in.

22. I find that controversial as the statement of accused sister was to effect she called her when it was apparent that the child was not well.

23. On the danger of the accused re-offending, that was a finding made after a social inquiry was conducted by the Probation Officer. This is an unsubstantiated allegation by the parents of the deceased child. I leave it at that.

24. In conclusion I find that due to the blood relationship between the accused and one of the key witnesses for the prosecution and given the fact the said witness is younger than the accused, that the likelihood of interference with that witness cannot be overruled.

25. Accordingly, I decline bail for now until the evidence of that witness is heard. Thereafter the accused may review her application for release on bail.

26. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF DECEMBER, 2017.

LESIT, J

JUDGE