



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 19 OF 2014

SUSAN KANINI KILONZO APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Applicant was charged with murder contrary to section 203 as read with Section 204 of the Penal code. It is alleged that on 10th February 2014 at Mlolongo Township in Athi River District within Machakos County, she murdered Faith Kasee. The Applicant pleaded not guilty to the offence. After taking the plea, the Applicant filed a Notice of Motion dated 8th October 2015 seeking to be admitted to bail pending the hearing and determination of her criminal case.

The Applicant urged her grounds for the application in the said Notice of Motion and a supporting affidavit she swore on 9th October 2015. These are that she took plea on 3.4.2014, and is a single mother of a minor of 12 years who was left alone and stays with neighbor. Further, that the evidence as per the witnesses statements cannot sustain a conviction and is only circumstantial, and that she is innocent until proven guilty. The Applicant averred that she would cooperate with the court and abide by the conditions of the court.

The Prosecution filed a replying affidavit in opposition to the application sworn on 22nd October 2015 by CPL. Allan Adalo, the Investigating officer in this Criminal case. The Prosecution's main grounds for opposing the application is that the Applicant is accused of murdering the deceased who was her daughter, and that she may target a witness, namely Festus Waa Nzuve, who is the former husband and father of the deceased if she is granted bail. Further that since the witnesses in this case are people well known to accused person, there is likelihood that she may interfere with them. Lastly, that considering the nature and seriousness of the offence, and the severity of the sentence provided for in law, there are compelling reasons to deny the applicant bail.

The Applicant however refuted the allegation made by the Prosecution in a Further Affidavit she swore on 23rd November 2015, wherein she denied that the witness known as Festus Waa Nzuve is the father of her deceased daughter Faith Mune, and stated that by the time she met and married the said witness, her deceased daughter was already born. Further, that they separated and later divorced with the said witness and that she has not met him since their separation, nor do they stay in the same locality.

The learned counsel for the Applicant, J.M Tamata filed submissions in which he reiterated the grounds for the application, and stated that they said grounds are based on Articles 49 and 50 of the Constitution. Ms Rono, the learned prosecution counsel submitted that she would wholly rely on the Replying affidavit filed in Court.

I have considered the pleadings and submissions by the Applicant and Prosecution. Article 49 (1) (h) of the Constitution permits the release of any arrested person including persons charged with a capital offence on bail/bond pending trial, unless there are compelling reasons not to do so. In the case of **Nganga vs Republic (1985) KLR 451**, the learned judge (Chesoni J. -as he then was) stated that in exercising its discretion to grant bail to an accused person under the Constitution and the relevant provisions of the Criminal Procedure Code, the court has to consider various factors as follows:-

“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 principal, 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 it shown by the prosecution that there are substantial grounds for believing that:

- a. The accused will fail to turn up at his trial or to surrender to custody; or**
- b. The accused may commit further offences; or**
- c. He will obstruct the courts of justice**

...The primary purpose for bail is to secure the accused person’s attendance at court to answer the charge at the specified time. “

The issue in this application then is whether there are compelling reasons why the Applicant should not be released on bail and if so, what are those compelling reasons and who carries the burden of satisfying the court with regard to the existence of such reasons. In **Republic –vs- Danson Ngunya & Another [2010] e KLR**, Makhandia J, (as he then was) stated that if the state wants the accused deprived of his right to be released on bond, then the State must satisfy the court that it would not be in the interest of justice to make an order granting bail/bond.

The Prosecution has in this regard named one witness in its replying affidavit who it states is the husband of the Applicant, and alleges that he may be interfered with by the Applicant. No evidence of the other witnesses said to be likely to be interfered with by the Applicant was provided by the Prosecution.

The Court directed the Prosecution to produce the statement of the named witness for perusal by this Court, and after perusal of the same and in light of no further evidence by the Prosecution to rebut the averments by the Applicant that she has no proximity with the said witness, I find no compelling reason to deny the said Applicant bail.

The Applicant’s Notice of Motion dated 8th October 2015 is accordingly allowed and I admit the Applicant to bail pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 500,000/= with two sureties of similar sum.
2. The sureties for the Applicant will be approved by the Deputy Registrar of this court.
3. The Applicant will attend mentions before the Deputy Registrar of the High Court, Machakos once every month until the case is heard and determined.
4. The Applicant shall be required to attend court for the remainder of the trial without fail.
5. In default of orders 1, 2, 3, and 4 hereinabove, the bond shall be cancelled immediately and sureties called to account.

It is so ordered.

DATED AT MACHAKOS THIS 20TH DAY OF JANUARY 2016.

P. NYAMWEYA

JUDGE