

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 52 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

SALOME WANJIKU JUNG'U.....1ST ACCUSED

TOM CHEGE MBITHI alias RASTA.....2ND ACCUSED

RULING

Salome Wanjiku Kung'u, 1st accused and Tom Chege Mbithi alias Rasta, 2nd accused are charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence state that on the night of 22nd/23rd June 2014 at Wabuga Village in Kikuyu Sub-County within Kiambu County jointly with another not before the court murdered George Mbithi Mwaura. Both accused have denied committing this offence.

The two accused persons moved the court in an application dated 20th March 2015 seeking to be admitted to bail pending the hearing and determination of this case. The application was canvassed before Hon. Lady Justice Lesiit who in her ruling delivered on 28th May 2015 declined to grant the orders sought citing the likelihood to interfere with witnesses as the main reason.

The 1st accused has come to this court a second time seeking to be admitted to bail pending the hearing and determination of this case. Mr. Gikandi submitted on behalf of the 1st accused. He asked the court to consider the paramount consideration that the accused will present herself in court for hearing until the case is fully determined. He submitted that the prosecution has not contested this and that there is no allegation that the accused will flee if granted bail; that if there are threats to witnesses, the 1st accused is not the one threatening them because she has been in custody. Counsel submitted that 1st accused undertakes to reside away from her home if granted bail.

The application is opposed by the prosecution counsel on the grounds that the 1st accused is likely to interfere with witnesses if released on bail.

I have considered the application, the supporting affidavits and the oral submissions on the part of the 1st accused. I have also considered the replying affidavit and oral submissions by the prosecution counsel in opposition to the application and read the court file including the earlier similar application, the probation reports and the ruling delivered on 28th May 2015. I am alive to the fact that bail is a right available to the accused person in this case. I am alive to the fact that this right is however not absolute and can be limited where there is reason to so limit. I do not see any changed circumstances in respect of this second application to persuade me to rule contrary to the earlier court. I will and do hereby decline this application. This case has a hearing date in June 2016. This court is at liberty to review this order after all the civilian witnesses, especially family members, have testified if there will be need to do so. The accused shall remain in custody in the meantime.

Dated, signed and delivered this 27th day of April 2016.

S. N. MUTUKU

JUDGE