

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 2 OF 2015

REPUBLIC.....PROSECUTOR

VERSU

M W K.....ACCUSED

R U L I N G

1. The Accused person herein is charged with *murder* contrary to **section 203 as read with section 204** of the *Penal Code*. It is alleged in the information dated 15/01/2015 that on 24/12/2014 at about 12.00 p.m. at Nguthuru Village in Nguthuru Location within Murang'a Country she murdered one **S W W**. On 25/02/2015 she pleaded not guilty to the charge. Her trial is scheduled to on 9/11/2016. She has in the meantime applied by notice of motion dated 5/10/2015 to be admitted to bail pending trial. The Republic does not oppose the application.

2. Bail pending trial is now a constitutional right that will be denied only for compelling reason. Any condition for such bail that the court might impose, again by constitutional edict, must be reasonable. See **Article 49(1) (h)** of the *Constitution of Kenya, 2010*.

3. I have perused the witness statement and other documents supplied by the prosecution to the Accused person and also to court, and I have noted the circumstances of the alleged offence.

4. The Deceased was aged about 2 years and was the first child of the Accused. At the time of the alleged offence the Accused had a second child who was then aged about 10 months.

5. I note that the main witnesses for the prosecution include the parents of the Accused and also close neighbours. It appears also that at the time of her arrest the Accused was living in the home of her parents.

6. There is no report before this court regarding the second child of the Accused. In all likelihood that second child is living with her grandparents in the very same home the Accused would be released back to if granted bail. The court has not been informed what the likely interaction would be between the Accused and her second child. Might that child be in danger from the Accused if she is released on bail into the same home where the child is likely living? And what kind of interaction will there be between the Accused and her parents who are the main prosecution witnesses in this case if she is, as it were, released back to them?

7. I hold the view that the circumstances of this case strongly militate against the Accused being admitted to bail pending her trial. These circumstances as outlined above constitute compelling reason to deny the Accused bail. Her application for the same is therefore dismissed. She shall remain in custody in the course of her trial. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 21ST DAY OF JULY 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 29TH DAY OF JULY 2016