



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 105 OF 2013

REPUBLIC.....PROSECUTOR

-VERSUS -

JECINTA WAIRIMU NUNGARI.....ACCUSED

RULING

This is a ruling on a Notice of Motion dated 12th November 2013 seeking for orders of bail pursuant to **Articles 49** and **50** of the **Constitution**. It is supported by the affidavit of the applicant Jecinta Wairimu.

The grounds relied on are that the applicant was arrested and arraigned in court on 28th October 2013 and the case is fixed for hearing on 11th and 12th June 2014. She has a fixed abode in Kiambu and is not likely to take flight. She has young children who needs her parental care and support. The deceased was the applicant's husband. The applicant undertakes to attend court for trial if she is released on bail. The application was argued by the applicant's counsel Mr. Gichuki who argued that the prosecution has not shown any compelling reasons to justify denial of bail. He relied on the case of **Republic vs. Shikoli** where Dulu, J laid down principles governing granting of bail.

The application was opposed by the State relying on the replying affidavit of Sgt Philip Osodo. Ms. Onunga for the State submitted that the applicant was found holding the murder weapons in her hands while the deceased lay on the ground unconscious with multiple cuts and other injuries. The incident took place in the compound of the deceased's and the applicant's home. The prosecution argue that they have very weighty evidence against the accused persons. Further that the applicant knows the witnesses in this case and where they live and she is likely to interfere with them. The prosecution urged the court to take into consideration the deceased's right to life, the seriousness of the offence and the severity of the sentence.

The relevant part of **Article 49(1)(h)** which is the basis of this application states as follows:

“1) An arrested person has a right (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

The provision does not outlaw bail in serious offences like murder or robbery with violence. Bail is now available for all accused or arrested persons in any offence with the only exception to the rule being the demonstration by the prosecution that there are compelling reasons. For this reason and in view of **Article 50(2)(a)** which presumes an accused person innocent till proven guilty, bail cannot be denied

on grounds of the seriousness of the offence and the severity of the sentence. On the fear that the applicant is likely to interfere with witnesses if released on bond, the prosecution must show the relationship or connection between the witnesses and the applicant which may lead to high chances of interference or influence on particular witnesses. The facts presented before me do not contain any such details. It is nothing more than a general statement that the applicant knows the witnesses and is likely to interfere with them. I find that the prosecution have failed to establish this ground of opposition to the application.

The prosecution are convinced that they have strong evidence against the applicant in this case. However, pursuant to the principle of presumption of innocence, this ground cannot stand. The presumption under **Article 50 (2)(a)** remains valid until the accused has been proved guilty by the court.

The prosecution urged the court to consider the right to life of the deceased as against the right to bail by the accused. The two types rights are provided for by the Constitution and each party is entitled to the enjoyment of his/her right. I wish to state that the right to bail of the accused does not compromise the deceased's right to life because the two rights are independent of each other. Where the accused is released on bail/bond, the release does not affect his obligation to face the law in the trial of the offence. The fact that the applicant is charged with the offence does not mean he must be convicted. The result will all depend on the evidence adduced by the prosecution. The presumption of innocence must prevail even in a case with high chances of ending in a conviction.

In the case relied on by the defence of **Republic vs. Shikoli** the court relied on the case of **Nyanga vs. Republic (1985) KLR 451** where it was held:

“The primary purpose of bail is to secure the accused person's attendance to court to answer the charge at a specified time”

I am in agreement that the issue of attending court is the main one to consider in granting bail.

In the application before me, there is no negative information on the character and antecedents of the accused. The accused has no history of absconding bail in earlier cases. The prosecution has not demonstrated any compelling reasons not to release the accused on bail. I therefore allow this application on the following conditions:

1. That the applicant shall be released on a bond of Kshs. 2,000,000/= with two sureties of a like amount;
2. That she will not interfere with witnesses pending the trial;
3. That she will attend all the monthly mentions and hearings pending disposal of the case;
4. That she will not leave the jurisdiction of the court without the permission of this court.

F. N. MUCHEMI

JUDGE

Ruling dated at Nairobi this **19th** day of **March 2014** and delivered in the presence of the accused, defence counsel Mr. Gichuki and the State Counsel Ms. Ikol.

F. N. MUCHEMI

JUDGE