



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION, MILIMANI
CRIMINAL CASE NO. 35 OF 2014

GRACE WANJIKU MAKUMI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Background

1. The applicant, Grace Wanjiku Makumi, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that she murdered Elizabeth Atieno Maina on 15th March 2014 at Mihang'o Estate in Embakasi East Nairobi County. Pending the hearing of the case, the applicant has approached this court seeking to be admitted to bail.

Notice of Motion

2. By a Notice of Motion dated 4th June 2014 the applicant, through her legal representative Mr. Ochako Advocate, states that the offence is bailable; that the applicant is law abiding citizen residing at Saika in Nairobi and therefore she is not a flight risk; that there are no compelling reasons to deny her bail and that she will not interfere with investigations. Further, in the supporting affidavit sworn by the applicant and dated 4th June 2014, the applicant deposes and affirms that she will not interfere with investigations and will abide by the conditions set by the court.

3. Mr. Ochako in his oral submissions told the court that the applicant has a family of young children who need her care. Counsel submitted that the replying affidavit by the respondent is based on unfounded apprehension that the applicant will not attend the court which is not true as there is no evidence to back up that apprehension. Further that even if the family of the applicant are witnesses, they have recorded their statement with the police and the applicant is not in a position to change that record.

Respondent's reply

4. The application is opposed by the respondent. The respondent in the replying affidavit states that the applicant knows that the prosecution evidence is strong and the sentence, if convicted, is severe and this makes her a flight risk; that her family members are witnesses and the applicant may interfere with them; that although the offence is bailable the right is not absolute but discretionary on the part of the court. The respondent urged this court to reject the application.

Determination

5. Chapter 4 of the Constitution 2010 spells out the Bill of Rights. Among these rights, there are those accruing to an arrested person. Article 49 (1) (h) of the Chapter provides thus:

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

6. The court is given discretion to deny bail. This discretion is to be exercised upon prove of compelling reasons not to grant bail. The prosecution bears the onus of proving compelling reasons. Among the factors considered by the court in an application like this one are:

- i. The nature of the offence and the severity of sentence.
- ii. The possibility that the applicant may abscond.
- iii. The possibility that an applicant may obstruct justice by interfering with witnesses or investigations.
- iv. The personal security of the applicant if released.
- v. The applicant is a habitual offender.
- vi. The applicant has no fixed abode.
- vi. Presumption of innocence.

7. My careful reading of the application and the submissions disclose no serious reason why this court should deny the applicant bail. The respondent has expressed apprehension that the applicant will abscond and interfere with witnesses who are family members but has not provided evidence to support that apprehension. At the time this case was brought to court and the plea taken, it is my belief that all the witnesses had recorded their statements. These statements have been served to the defence and therefore they are not likely to be changed. I fail to see how the applicant can interfere with that record.

8. In a similar case where a mother was charged with murder and her children and husband were witnesses, I found that the fears that the applicant would interfere with her children who were witnesses unfounded because the prosecutor had all the statements he would rely on; that it is to those statements that the prosecutor would turn to lead evidence and if the witnesses for whatever reason were to change their evidence to be at variance with what the statement says, the law has procedures to deal with such situations to ensure that the cause of justice is not obstructed (**see Ruling in High Court of Kenya at Garissa Criminal Case No. 28 of 2012, Shelly Kavila Nzomo v. Republic - unreported**).

9. I will conclude by stating that this court has not been compelled to deny bail to the applicant. I want to believe that this court is accommodative to the respondent to bring evidence to show that the applicant, upon release on bond has done any of the acts that may amount to obstruction of justice in this case. If such evidence were to be tabled before this court and to be proved to be true, then the consequences would be cancellation of bond. In the absence of compelling reasons therefore, this court hereby allows the application for bail on the following terms:

- i. The applicant, Grace Wanjiku Makumi, shall execute a bond of one million Kenya shillings (Kshs 1,000,000) with two sureties of similar amount.
- ii. In the alternative the applicant is at liberty to deposit a cash bail of three hundred thousand Kenya shillings (Kshs 300,000) with the Chief Registrar of the Judiciary.
- iii. The applicant shall also present herself for mentions every 30 days before the Deputy Registrar,

Criminal Division, until this case is finalized or until this court makes further orders. The first such mention shall be 30 days from the date the applicant is released from custody on execution of the bond or payment of cash bail.

10. Orders are made accordingly.

Dated, signed and delivered this 21st day of October 2014.

S.N.MUTUKU

JUDGE