



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 93 OF 2014

LESIT, J.

REPUBLIC.....PROSECUTOR

-VERSUS -

MAUREEN WANJIRU GAKURO.....ACCUSED

RULING

1. The accused **MAUREEN WANJIRU GAKURO** is charged with **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.
2. The accused has filed a Notice of Motion application dated 1st December 2014 in which she seeks:
 - a) That this Honourable Court be pleased to admit to bail/bond upon such terms as may be reasonable and fair to the Applicant/Accused pending the hearing and determination of this case.
 - b) Any other Orders that this Court may deem necessary to grant.
3. The grounds for the application are cited on the face of the application thus:
 - a) That this Honourable Court has discretionary power to admit the Applicant to bail and/or bond pending the hearing and determination of the case.
 - b) That the Applicant is ready and willing to abide with any and all bail terms and conditions that may be set by this Honourable Court.
 - c) That there are no compelling reasons as to why the Applicant should not be admitted to bail.
 - d) That the Applicant has no previous criminal record and has a permanent residence in
 - e) That the Applicant shall not interfere with investigation witnesses.
4. The application is supported by an affidavit sworn by the Applicant of even date. The gist of the affidavit is that the accused is a mother of a child and that since her detention at Langata

Women Prison the child has moved to stay with her mother in Nyandarua.

5. The accused deposes that she is epileptic since she was 16 years and due to her incarceration she is unable to receive the specialized treatment she requires. The accused deposes further that she is prepared to secure her release by depositing a title deed for a property worth kShs.2.3 million.

6. The application is opposed. The prosecution has filed a replying affidavit sworn by Sergeant Judith Tuwei, the Investigating Officer in this case. The reasons advanced to deny bail are the fact the offence the accused faces is punishable by death, that accused has not indicated her true place of abode and may abscond if released.

7. The prosecution has deposed that the Doctor's Appointment Card annexed by the accused in her affidavit only shows three scheduled visits to the doctor in 2007, but nothing in it confirms the purpose of the visit, or diagnosis on the accused. The State deposes that the accused can get medical attention while in custody and where necessary she can be taken to Kenyatta National Hospital.

8. Sgt. Tuwei deposes that the accused may intimidate the key witness in this case if released as she knows where he carried out his business.

9. Mr. Waweru urged the application on behalf of the accused. He started by stating that he forgot to write accused permanent address. Counsel reiterated the disposition on the supporting affidavit. Counsel urged that accused resides in Nakuru while the witnesses reside in Nairobi and that therefore there was no likelihood of interference with witnesses.

10. Mr. Konga opposed the application and urged that since accused failed to give her permanent place of residence bail should be denied. Counsel urged that the accused did not give a comprehensive report showing the condition she suffers and that Langata Prison has medical facilities and where necessary she can be taken to Kenyatta Hospital.

11. I have considered the application for bail pending trial. The affidavits in support and in response to the Notice of Motion, and the submissions by Mr. Waweru for accused and Mr. Konga for the prosecution.

12. Bail is a constitutional right to any person accused of committing an offence so long as there are no compelling reasons not to grant bail. The court has the discretion to grant or not grant bail but in exercise of that discretion it must take into account certain considerations.

13. In **Ng'ang'a vs. Rep [1985] KLR 451** Chesoni, J, as he then was set out the grounds upon which bail may be refused as follows:

(a) In principle, 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 is shown by the prosecution that there are substantial grounds for believing that:

(i) The accused will fail to turn up at his trial or to surrender to custody;

(ii) The accused may commit further offences; or

(iii) He will obstruct the course of justice.

(b) The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making

this consideration, the court must consider:

- (i) The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;**
- (ii) The strength of the prosecution case;**
- (iii) The character and antecedents of the accused;**
- (iv) The likelihood of the accused interfering with prosecution witnesses.”**

14. The prosecution has the burden to show that there exists compelling reasons not to grant the accused bail. The reason advanced was that the accused had no known fixed abode. That reason was overtaken when the accused annexed to her affidavit a title of a possible surety showing that she can easily be found if required.

15. The other reason advanced was that the accused is likely to abscond if released on bond due to the seriousness of the charge and the sentence she is likely to face. The seriousness of the charge and the likely sentence to be meted are all not sufficient standing on their own to deny bail. There must be other reasons advanced especially to establish that the accused is a flight risk as alleged.

16. No such proof was advanced. I find that there are no compelling reasons advanced which would prevail upon the court to justify the denial of bail to the accused person. Consequently I grant the accused bail on the following terms:

- a) The accused may be released on a bond of KShs 500,00/- with two sureties of like sum;**
- b) Alternatively the accused may be released upon deposit of KShs 500,000/-.**

DATED AT NAIROBI THIS 19th DAY OF DECEMBER, 2014

LESIT, J.

JUDGE.