



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 104 of 2012

REPUBLIC.....PROSECUTOR

-VERSUS -

ALICE WANJIKU OROTI.....ACCUSED

RULING

By an application dated 02/01/13 the applicant Alice Wanjiku Oroti seeks for orders of release on bail pending trial pursuant to **Article 49(1)(h)** of the **Constitution**. The applicant faces a charge of murder contrary to **Section 203** of the **Penal Code**.

The application was argued by Mr. Oundu on behalf of the applicant. The grounds upon which the application is grounded are that the applicant has a right to be released on bail on reasonable conditions. She is ready to comply with any conditions which the court may impose. The applicant has two children of tender age who need her motherly care and maternal support. Being a person with a fixed abode, the applicant is unlikely to abscond. The defence contends that the State has not shown any compelling reasons not to release the applicant on bail. The defence also relied on the pre-bail report which is positive in relation to the applicant save for an indication that the mother of the deceased does not want the applicant to be released on bail. The applicant is said to be five (5) months pregnant expecting a child in three months time. She therefore requires a favourable environment suitable to a pregnant woman.

The State relying on the replying affidavit opposed the applicant is likely to interfere with the witnesses if released on bond. It was also said that the emotions of the relatives of the deceased are still high and the applicant is at risk of being harmed by them. The State argued that there are adequate facilities for the accused in prison to take care of her family way condition. The court when granting bail shall consider the issues raised in this application in addition to other laid down principles. These are as follows:

- (I) the likelihood of the applicant failing to turn up for trial;
- (ii) the likelihood of the applicant interfering with the witnesses;
- (iii) the seriousness of the offence and the severity of sentence;
- (iv) the weight of the evidence;
- (v) the previous criminal record of the applicant.

The applicant in her supporting affidavit undertakes to attend court and to comply with any conditions imposed by the court. In the case of **Watoro vs. Republic 1991 KLR 220** the court said:

“I think I have made it clear over a number of rulings in bail application that I take the view on the authority that the paramount consideration in a bail application is whether the accused will turn up for trial”.

In the absence of any perceived fear, the court will impose terms and conditions in the order for release on bail which will secure the attendance of the accused for trial. If the accused breaches any term or condition imposed by the court, the law provides the manner in which the issue may be dealt with.

The offence facing the applicant is that of murder. It is a serious offence which carries a mandatory death sentence. The **Constitution** makes all offences bailable irrespective of their nature and the sentence provided. However, the court may grant bail for any offence but impose different terms and conditions for bail depending on the seriousness of the offence, the severity of the sentence in addition to other factors.

As for previous convictions, there is no indication that the applicant has previous convictions. The pre-bail report was also positive despite the mixed reactions of the family and the community on the release.

The fear of the prosecution was based on the premise that the applicant lives in the same neighbourhood with the witnesses some of whom are her relatives and that if she is released on bond, she is likely to interfere with the. The accused is alleged to have murdered her husband. The relatives at home are her in-laws who are not her blood relatives. The relatives of the deceased may not be expected to mingle or relate closely to the applicant so as to interfere with the witness. The mother in-law is the one whose sentiments in the pre-bail report were to the effect that the accused remains in custody until the case is over. The pre-bail report indicates that the family of the accused are ready to remove her from their home in Kiambu and take her to Kahawa West to stay with her auntie. The removal of the applicant from her parents home will grant her some kind of security and avoid contact with the deceased's relatives some of whom could be witnesses in this case.

I agree with the applicant's counsel that the reaction to release by the applicant's mother in-law was a natural one and should not be allowed to affect the applicants release on bond.

The prosecution may have strong evidence against the accused but this evidence is yet to be tested in cross-examination. The most important thing to consider is whether the accused will attend trial which issue I have already addressed. The principle that the accused is presumed innocent until proven guilty must override the fact that the prosecution have strong evidence against the applicant.

In the case of **Watoro vs. Republic** (sic) Judge Mohamed Ibrahim said:

“The main function of bail is to ensure the presence of the accused in the trial”.

I am in agreement with this observation.

In conclusion, I find that the prosecution have not shown any compelling reasons not to release the accused person. I therefore allow the application dated 02/01/13 on the following terms:

- a) That the applicant be released upon executing bond of Shs.1,000,000/= with one surety of the same amount;
- b) That the applicant should not be interfere with the prosecution witnesses or have any contact with them which may be prejudicial to this case;
- c) That the applicant shall attend mentions on monthly basis until the case is disposed of;
- d) That breach of any of the conditions shall result in automatic cancellation of the bond.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered on the **20th** day of **March, 2013** in the presence of the applicant, his counsel Mr. Oundu and the State counsel Ms. Ikol.

F. N. MUCHEMI

JUDGE

20/03/13