



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Case 32 of 2011

REPUBLIC PROSECUTOR

versus

JANE WANJIKU MUTAHI
SIMON MURAGE MUTAHI
LYDIAH NJOKI MUTAHI

SHEM KIAMA MUTAHIACCUSED

RULING

1. By a Notice of Motion dated 27th March 2012 the applicants moved this court that they be released on bail or bond pending trial.
2. The application was grounded on the following grounds:
 - a. that the applicants have a constitutional right to be granted bond or bail pending trial upon reasonable conditions as the court deems fit.*
 - b. That the applicants are regarded innocent until proved others.*
 - c. They will faithfully appear in court and are ready to comply with any conditions set by the court.*
3. Each and every applicant has sworn an affidavit in support of the application herein.
4. The application was opposed by the State through a replying affidavit sworn by P.C JOSEPHAT KIPTANUI LANGAT the relevant part for this ruling being
 - 4. That the deceased had confided in Simon Maina that in case he disappeared his family members were responsible because he had placed a caution on the family land and it could not be sold.*
 - 5. The 2nd accused Simon Murage Mutahi and the 4th accused Shem Kiama Mutahi were seen by Boniface Mutahi a juvenile witness beating the deceased with a big stick while he was naked and they carried the deceased outside to an unknown destination.*
 - 9. That on 9th November 2011 the 1st accused Jane Wanjiku Mutahi was tracked down by Safari com through her mobile phone and she was arrested. She then led the police to the deceased grave site where his body was recovered.*
 - 12. That it would be prejudicial to have the applicants released at this stage as there is a real danger of*

interference with witnesses especially one Boniface Mutahi, son to the 2nd accused Simon Murage Mutahi who was the only eye witness and other witnesses who are relatives to the deceased.

13. That the homes of the 1st, 2nd and 3rd accused were burnt by irate members of the public on 9th November 2011 and they now do not have a permanent resident.

5. When the matter appeared before my brother Mr. Justice Serгон he declined to grant the application since he was of the view that the accused persons might interfere with one witnesses namely Boniface Mutahi but directed that the accused persons are at liberty to renew their application once the witness has testified.

6. The said witness testified before the court on 17th December 2012 where upon the accused persons renewed their bail application.

7. To enable the court decide on the same I directed that prebail probation report be filed which have now been filed.

8. As regards the 1st accused Jane Wanjiku the probation Officer recommended that she be not released because of her own security and that there is no alternative place of residence for her should she be released.

9. For the 3rd accused Lydia Njoki the report recommended that she be released on bond since she is married and her husband is ready to stand security for her. She will also have an opportunity to be with her two children aged 9 and 7 years.

10. As regards the 4th accused the same report recommended that he be released on bond since his wife and children are ready to receive him at Game-rock where they are currently living.

11. The applications of this nature are the products of the fruits of the constitution of Kenya 2010.

12. According to Article 49(1)(h) of the Constitution it is the right of the accused person to be released on bail pending trial unless there are compelling reasons for not so doing and since what constitute compelling reasons are not defined that discretion is left upon the court to define the same.

13. It should however be noted that it is upon the state to prove that there are compelling reasons for not granting an accused person bond.

14. The purposes of granting bail however is to secure the attendance of the accused in court from the safety of his own home.

15. I have noted that the only compelling reason given by the state was that there is a likelihood of interference with the juvenile witness who has since testified and therefore that reason can now not apply to all witnesses.

16. However there is evidence tendered through the probation report that it might not be safe the 1st accused on bond for her own security sake.

17. I take the view that the government is under obligation to provide security to all her citizen the 1st accused inclusive Article 29(c) and 238 and therefore the reason advanced is not compelling enough.

18. I however note that the accused persons were charged with the murder of their sibling and even though considered innocent at this stage the court has to take that into account while setting bail term.

19. I therefore allow the application herein on the following terms:

a. ***Upon executing bond of Kshs. 1,000,000/- with two (2) sureties of similar amount or***

b. in the alternative cash bail of Kshs. 500,000/-.

c. To present themselves to the Deputy Registrar of this court for mention once every month.

d. The 1st accused not to go to her home and the home of the victim during the pendency of this case in court but to provide the Deputy Registrar with a suitable place of resident and to report to the chief of the said place upon release.

Dated at Nyeri this 18th day of April 2013

J. WAKIAGA

JUDGE

Mr. Kimunya for Mr. Mugambi for 1st 3rd and 4th accused.

Mr. Njue for the state.

Court: Ruling read in open court in the presence of the accused persons and their advocates stated herein. Mention before the Deputy Registrar on 17th May 2013.

J. WAKIAGA

JUDGE