



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Law Courts)

Criminal Case 43 of 2011

DORIS MWENDWAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused, Doris Mwenda has applied to be released on bond pending trial. She is facing a murder charge the particulars of which are that on the night of 14th May 2011 at **Gachororo Village** within **Kiambu County** murdered **DOREEN GATHIRWA GITUMA**.

Upon her arrest she was produced before court on 20th May 2011 but subsequently could not take plea for several months owing to her medical and mental status. She was finally found fit to plead and did take plea on 3rd March 2012 when she pleaded not guilty and was remanded in prison custody.

In her application dated 10th December 2012 filed through the firm of **Muoki & Co. Advocates**, she beseeches the court to release her on grounds that the offence is bailable; that she will not interfere with witnesses; that she is not a flight risk; and, will attend court whenever required.

Her application is opposed by the State through the Replying affidavit of the Investigating Officer one **No. 56615 Police Inspector Betty Cheruiyot**. She avers that the State has overwhelming evidence that would secure a conviction; that the severity of the sentence is likely to make the accused abscond; and, that there is a possibility of the accused interfering with witnesses.

I heard arguments for and against the application on 27th February 2013. I also called for a social inquiry report in respect of the applicant which report was prepared and presented to the court by the probation officer on 15th April, 2013.

The present application is bought under **Articles 20, 22, 27, 28, 29, 49 and 50** of the **Constitution** and **Sections 123, 124 and 125** of the **Criminal Procedure Code**. Of relevance however is **Article 49(1) h of the Constitution** which provides that 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. It is the responsibility of the State to provide the compelling reasons.

In the present application, the state has expressed fear that the accused might abscond and not attend trial. Whereas the possibility of failing to attend trial is a compelling reason, the State has not demonstrated to the satisfaction of the court that such a possibility exists in reality. On the other hand,

submissions were made on behalf of the applicant that if released she undertakes to relocate to her rural home in Nkubu, Meru and attend court whenever required. It was also submitted that the accused has been sickly and is epileptic. On record are medical reports to that effect.

Having considered the affidavits and respective submissions as well as the social inquiry report in respect of the applicant, I find that there is no compelling reason for me not to admit the accused to bail. I find the application one in which the discretion of the court can be exercised in favour of the applicant. I release her on the following terms:-

- (i) She shall execute a personal bond of Five hundred thousand shillings (Kshs.500,000/-) with two sureties of KShs.500,000 each.
- (ii) Upon release, she shall report to the District Criminal Investigation Office, Nkubu once every three weeks until further orders of this court. A compliance report thereof shall be filed with the court by the Investigating Officer through the prosecutor during every routine mention of the case.
- (iii) She shall not interfere with the prosecution witnesses and any such interference shall lead to the automatic cancellation of this bond.
- (iv) She shall attend court for the mention of her case once every month. The first of such mentions shall be on 26th June, 2013.

It is so ordered.

Ruling delivered, dated and signed at Nairobi this 20th day of May , 2013

R. LAGAT - KORIR
JUDGE

In the presence of:

.....: Court clerk
Doris Mwendwa...: Applicant
.....: For the accused/applicant
.....: For the state/respondent