



REPUBLIC OF KENYA

High Court at Meru

Criminal Case 4 of 2010

REPUBLICPROSECUTOR

V E R S U S

MERCY KATHAO MICHIRA.....RESPONDENT

LESIIT J.

R U L I N G

The accused in this case is charged with murder contrary to section 203 of the Penal Code. The offence was allegedly committed on the 7th January, 2010. The accused has applied to be released on bail through her counsel Mr. Omari. Mr. Motende for the State did not oppose the application and has gone further to state that after consulting the investigating officer of this case, he could boldly state that there were no compelling reasons to oppose the application.

The principles which must be applied when considering this kind of an application were ably set out in the case of Ng'ang'a vs Republic 1985 KLR 451 where Hon. Chesoni J, as he then was held:

“1. The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors:

(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.”_**

The accused person is aged 55 years. She is said to have developed diabetes since her incarceration in relation to this case. From the Pre-Bail Report from the Probation the accused is not a threat to the community. The deceased was her younger brother. The family does not oppose her release on bail. In view of the above I will grant the applicant bail in the following terms:

- 1. The accused will sign a personal bond in the sum of Ksh.100,000/-**
- 1. The accused will be required to report to the Area Chief or his Assistant Chief once a month and proof of the said reporting be availed to the court on the date of the hearing of this case.**

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF MAY, 2013.

LESIIT, J

JUDGE.