



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

HCCR NO. 50 OF 2013

LESIIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

JUDITH KANANA MUGA..... 1ST ACCUSED

DENIS MUTUMA.....2ND ACCUSED

GLADYS KARANGI.....3RD ACCUSED.

RULING

The Accused persons are charged with one count of murder contrary to section 203 as read with section 204 of the Penal Code. They are jointly charged of the murder of one Beatrice Kauna Nkonge on 24th May, 2013.

Mr. Kiogora for the accused invoked Article 49(1)(h) of the constitution and sought bond for all three accused. Counsel urged that all three accused had fixed places of abode and also had families. He pointed out that the 1st and 3rd accused, both women, had young children. Mr. Kiogora urged that he had counseled the accused persons on the seriousness of the charges they were facing and what it meant to be released on bond.

The state was represented by Moses Mungai. The learned State Counsel stated that he was leaving the matter to the court to decide. In an application for bail pending trial the factors a court should consider include:

1. Whether the accused persons were likely to abscond or jump bail.
2. Whether the accused persons may interfere with the witnesses.
3. Whether

These principles were discussed 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;**

The likelihood of the accused interfering with prosecution witnesses.”

Although the case was decided before the Constitutional amendment that removed restriction on the nature of charges not eligible for consideration for release on bail. Under Article 49(i) (h) of the Constitution 2010, the only reason stated why bond should be denied is if there are compelling to deny accused bail pending trial.

The State has not opposed the application, neither did it support it, I called for Pre-Bail Reports on each accused from the Probation. These reports are on record. From the reports, it is clear that the 1st and 2nd accuseds are man and wife. The 1st and 3rd accuseds have young children with 3rd accused being held in custody with her child. The Probation Officer has given a clear picture of the reactions of both the deceased family and that of the accused. The conclusion in her report is that there were mixed reactions. I do understand why the officers found it difficult to make any recommendations on the accused application for bail. I have taken into account all the relevant factors that affect the issue of bail. My conclusion on the application are;

1. That the incident took place fairly recently.
2. The family of the deceased have not come to terms with their loss especially the children of the deceased. The thought of seeing the accused persons out on bond has traumatized them.
3. The likelihood of retaliatory attack or revenge is a likely outcome if the accused are released on bail. It is rather too soon since he deceased death.

It is my view that it would be ill informed to release the accused persons at this early stage of the case. The persons affected by the death from all sides should be allowed time. To cool down their emotions or heal. Time is a healer.

Having considered the application I have come to the conclusion that there are compelling reasons not to grant bail based on my findings and conclusions as explained in this judgment. The application for bail by each accused is declined for now.

SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF JULY 2013.

J. LESIIT

JUDGE