

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 13 OF 2009

REPUBLIC RESPONDENT

VERSUS

MARGARET NYAGUTHI KIMEU ACCUSED/APPLICANT

RULING

1. The Applicant, **Margaret Nyaguthi Kimeu**, is charged with the offence of murder contrary to section 203 and 204 of the Penal Code. When the Applicant was arraigned in court on 1/2/09, she pleaded not guilty. The case has since then proceeded to hearing and the prosecution case was closed on 8/11/12. The case is pending submissions on whether there is a case to answer.
2. On 23/5/2013, the Applicant applied for bail pending trial. According to the affidavit in support of the application, the Applicant has stated that she has been in custody for the last four years. That she is a wife and a mother of eight children. The Applicant undertakes not to interfere with witnesses and also promises to abide by the terms of bond. The Applicant has also expressed her fears that the trial may take long due to the large volume of work at the station.
3. In opposition to the application, the State through the Investigating Officer filed a replying affidavit sworn on 9/7/13. It was contended that all the prosecution witnesses have testified and the Applicant is aware of the weight of the prosecution case and will therefore have an incentive to abscond. It was also asserted that the offence attracts a severe sentence and this will give the Applicant a reason to abscond.
4. I have considered both the application and the reply to the same. **Section 49 (1) of the Constitution** states as follows:-

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending the charge or trial unless there are compelling reasons not to be released.”

5. However, the court has discretion to grant or refuse bail depending on the circumstances of each case. The court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case or pending the hearing of an appeal. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic (1986) KLR 600**. The said principles include the following; the nature of the offence, the strength of the evidence, the character or behavior of an accused and the seriousness of the punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exist which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused will interfere with witnesses if he is released on bond.
6. I have considered the application, the nature of the offence and the strength of the evidence on record and the severity of the sentence to be meted out if the Applicant is found guilty. All the prosecution witnesses have testified and the prosecution case closed. The evidence on record cannot be termed as frivolous. However, the court is yet to hear the submissions and make a ruling as to whether there is a case to answer. This case is at an advanced stage. It is imperative that the case be heard on a priority basis and concluded without further delay. Consequently, the application for bail is rejected.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 30th day of October 2013.

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JUDGE