



REPUBLIC OF KENYA
HIGH COURT OF KENYA
AT EMBU

MURDER 24 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

PETER IRERI KIMOTHO.....1ST ACCUSED

JOHN MBOGO KIMOTHO.....2ND ACCUSED

STELLA NJOKI MWANGI.....3RD ACCUSED

STEPHEN KATHURI KIMOTHO 4TH ACCUSED

JUDGMENT

Stella Njoki Mwangi who is the second Accused in the amended information dated 3/11/2010 is jointly charged with 2 others for the offence of Murder contrary to section 203 as read with section 204 of the penal code. The case has not taken off yet. On 16/11/2010 counsel for the Accused persons made an application for bail “and more particularly” for Accused 2. He said that the second Accused is a mother of a 2 year old child and other children who are in school. He informed the court that the said children are suffering without her.

On behalf of the 2 other Accused persons, he only said that they too have families to take care of.

In response to the application for bail, the state through one corporal Manyorio Simotwo swore an affidavit filed in court on 30/11/2010.

I have nonetheless looked at the ‘Affidavit’ and noted that the same is not dated. This is contrary to the provisions of section 5 of the Oaths and Statutory Declarations Act (Cap. 15 of the Laws of Kenya), which requires an affidavit to indicate the date the oath was taken.

The said ‘Affidavit’ is therefore not compliant with the law and I hereby strike it off. That would therefore mean that the bail application is not opposed. The current constitution of this nation now allows

for release of Accused persons on bail without discriminating against those charged with capital offences. The only caveat is that there should not be any complellable reasons to militate against the granting of bond.

Even without the said Affidavit, this court cannot ignore the fact that the offence the Accused persons are charged with is a serious one. It carries a mandatory death sentence. That in itself is in my considered view enough reason for one to be tempted to jump bail if released. No evidence has been tendered before this court so far to enable the court to assess the evidence against the Accused persons. I cannot therefore grant bond blindly just because the law provides for the same. As far as accused 2 is concerned, I have been told that she has a 2 year old toddler and other children to take care of. That is a heavy responsibility which would make her an unlikely candidate to jump bail. The children especially at that young age need the love, care and comfort of their mother. I do not find any compelling reasons for me to deny her bond.

In the circumstances, I order that the 2nd Accused – Stella Njoki Mwangi be released on her own bond of kshs.200,000/= plus one like surety to appear. The other Accused persons can renew their bail application later in the course of hearing.

W. KARANJA

JUDGE

Signed by the above but dated and delivered at Embu this 5th day of April 2011 by the undersigned.

M. WARSAME

JUDGE