



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 17 OF 2019

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

PERIS MUTHONI NJAU.....RESPONDENT

RULING

1. The right not to be denied bail/bond without just cause is based on the presumption of innocence until contrary is proved. The right to be released on bail/bond is not absolute. This is what **Article 49(1)(h)** of the Constitution provides. That Article is in the following terms:-

“An arrested person has the right:-

(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.”

2. **PERIS MUTHONI NJAU** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. She pleaded not guilty of that charge on 26th March, 2019. The court on that date requested for a pre-bail probation report to assist the court in determining the bail application. That report dated 12th April, 2019 was availed and on 4th June, 2019 this Court admitted the accused to be released on bond of Kshs.500,000/= with one surety of like sum.

3. The accused did not avail herself to the bond terms and remained in custody. The trial commenced on 10th March, 2021 when two witnesses of the prosecution testified. The accused sought, by her Notice of Motion dated 15th March, 2021 review and variation of the bond terms. That application is based on the grounds that the accused and her family have been unable to comply with the bond terms because they reside on a property which does not have a title. That the accused's parent, who are traders have only been able to raise Kshs.100,000 to date which amount they are willing to deposit in court to aid in the release of the accused on cash bail. Accused's parents also have offered to be personal sureties to the accused and given their undertaking to ensure accused attends court.

4. I have considered the application before court. I am concerned by disparities in the pre-bail report dated 12th April, 2019 and the one dated 30th April, 2021. The earlier report recorded the accused family requesting the family to be released on reasonable bond terms. That report then recorded:-

“The family members are willing to use the title deed of the piece of land on which their homestead stands for bond should it be granted.”

5. The latter pre-bail report to the contrary stated:-

“The family lives in a family land in Juja Mirimaine, which is registered in the grandparent's name. The land does not have a title.”

6. I am unable to reconcile those differences in those two reports, one compiled in the year 2019 and the other in April, 2021. That discrepancy is accompanied by other differences where in the first report the parents of accused are described as a butcher (the father) and market grocery seller (the mother) and in the second report they are described as being dependent on grocery business and that report ends by stating:-

“No family member is engaged in serious economically gainful employment.”

7. The differences in the two probation reports is of concern. It is because of that concern that I decline to review the bond terms. I have also borne in mind that the accused faces very serious offence, the offence of murder, and that seriousness can be an incentive to fail to attend court: See the case of **KELLY KASES BUNJIKA V. REPUBLIC (2017) eKLR**. The bond terms of this Court therefor, are reasonable and will not be reviewed.

8. In the end, the Notice of Motion dated 15th March, 2021 is declined.

RULING DATED AND DELIVERED AT KIAMBU THIS 13TH DAY OF MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant.....Ndege

Accused:Present

For Accused:Mr. Marube

For DPP:Kasyoka

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE