



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE E036 OF 2020

EDNA MUENI VISILI ACCUSED

VERSUS

REPUBLIC DPP

RULING

This is for the application of the accused **EDNA MUENI VISILI** dated 5.1.2021. The application came up for hearing on 13.1.2021. Mr. Gatobu, counsel for the applicant submitted that the applicant has been in custody from 16.10.2020. He pleaded that the accused be released on bail on reasonable terms as there are no compelling reasons in this matter. It was further submitted that this offence is bailable, that the applicant, a mother of 2, is not a flight risk. In support of the submissions, counsel relied on the decided case of Republic Versus Richard David Alden (2016), and the Bail Bond Policy Guidelines.

Ms. Kimani, for the state opposed this application on several grounds. First, that the right to bail is not absolute and that there are compelling reasons herein. She submitted that the accused is likely to interfere with the prosecution witnesses, who were neighbours of the accused and well known to her. It was further submitted that the accused is a flight risk likely to abscond if released on bail since her place of work is not known. Also that she faces a serious offence of murder, and so there is great incentive for her to escape. And lastly, that the safety and security of the accused is not guaranteed.

This court, in view of the submissions, called for a pre-bail report on the accused. The report, filed in court on 10.3.2021 has duly highlighted the material circumstances of the accused with regard to bail.

I have considered the submissions made herein by both sides. Under Article 49(1)(h) of the Constitution of Kenya, any arrested person has a right;

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

The above provisions makes 2 important declarations. The first is that the right to bail is available to all accused person irrespective of the charges they face in court. The seriousness of the offence, in itself, is therefore not a good or compelling reason. The second important declaration is that the right to bail may be denied should there be compelling reasons shown.

It is therefore the responsibility of the prosecution to show and prove the existence of the compelling reasons, if at all. In this case, the prosecution has opposed the application, on grounds that the accused is likely to interfere with the prosecution witnesses, and also that she is a flight risk. Also, and rather curiously, that for her own safety and security, the accused ought to be remanded in custody.

Whereas, the issues raised by the prosecution may indeed be compelling reasons, the same may only be held to be so if they are proved. The prosecution ought to have at least laid some prima facie evidence to show this court that the issues raised are indeed compelling reasons. The prosecution, in my view fell short in proving these objections. Merely raising the objections and failing to offer any proof the same in the manner in which it was submitted herein by the prosecution would therefore not suffice.

It is the opinion of this court, and also considering the report of the Probation Officer filed herein, that the prosecution has failed to prove the existence of any compelling reasons. I dismiss the objections of the prosecution and order that the accused may be released on bond in the following terms:-

1. THAT the accused may be released upon posting a bond of Kshs.1 million with 1 surety of a similar amount.

2. In the alternative, the accused may be released upon deposit of Kshs.200,000/= in cash bail.

3. THAT the accused is ordered never to contact and or interfere with any of the prosecution witnesses either directly or indirectly till this case is determined.

4. THAT the accused is ordered, upon release on bond/bail never to go back to stay in the said residence, being Afya Court, Tassia estate, where she stayed with the deceased.

5. The accused/applicant is ordered, upon release, to attend court at all times as may be ordered by the court from time to time till this case is determined.

Ordered accordingly.

D. O. OGEMBO

JUDGE

9.6.2021.

Court:

Ruling read out in open court (on-line) in the presence of the applicant (Langata Woman Prison) and Ms. Kibathi for the state and Mr. Gatobu for accused.

D. O. OGEMBO

JUDGE

9.6.2021.

Court:

Date of hearing to be fixed. Hearing 28.7.2021.

D. O. OGEMBO

JUDGE

9.6.2021.