



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E018 OF 2021

REPUBLIC.....PROSECUTOR

VS.

LWN (Minor).....SUBJECT

RULING

1. **LWN** (the subject) is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The subject is 17 years old. She pleaded not guilty to the charge and she is awaiting the commencement of her trial.
2. **Article 49(1)(h)** of the Constitution guarantees the rights of any person charged with an offence to be granted reasonable bail, unless there are exceptional circumstances not to grant bail.
3. Further the subject having pleaded not guilty to the offence is presumed innocent until proven guilty. Presumption of innocence is an integral value protected by the constitution: See **Article 50(2)(a)** of the Constitution.
4. I have before me, two reports on the subject. One report is prepared by the office of sub-county Children Officer, Kiambu. The second report is by **Probation and Aftercare Services**. Both reports inform me that the subject is a 17 year old girl. She stopped going to school in 2019. She however is now willing to go back to school and to reside with her mother at Kiamanyeki. The family has no title documents of land to assist in standing surety for the subject. The family prays that the subject be granted reasonable bail terms.
5. The subject being a child who is under 18 years and she should not be detained except as a measure of last resort: See **Article 53(1)(f)** of the Constitution. That same **Article 53 Sub-Article (2)** provides a guiding principle in matter relating to a children, that such matters should be considered on the ground of what is the best interest of the child.
6. Bail is always granted on such terms to ensure the applicant does attend trial. This is what was stated in the case of **REPUBLIC VS. ROBERT ZIPPOR NZILLU (2018) eKLR** thus:-

“10. Gravity of the offence as a consideration was appreciated by Mbogholi Msagha, J in CRIMINAL APPLICATION NO. 319 OF 2002 PRISCILLA JEMUTAI KOLONGE VS. REPUBLIC (unreported) at page 3, wherein he held as follows:-

‘However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences.’”

DISPOSITION

7. The subject having come from a humble back ground I do grant the following orders:-

(a) The applicant/subject is released on free bond with one surety of Kshs.100,000 or in the alternative on cash bail of ksh100,000.

(b) The applicant/subject is released on condition that during the pendency of this trial she shall reside with her mother at Kiamenyeki, Kirinyaga County.

RULING DATED, SIGNED AND DELIVERED AT KIAMBU THIS 10TH DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Subject: Present

Applicant/Subject: Mr. Karanja

Respondent/prosecutor: Mr. Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE