



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 6 OF 2020

REPUBLIC.....DPP

VERSUS

EMMACULATE ATIENO OUDO ALIAS EMMA.....ACCUSED

RULING

This matter came up for the accused's oral application for bond pending trial. In the short submissions, Mr. Omari only hinted that the accused is a 4th year university student and will attend court for her trial. The prosecution objected to released of accused on bail.

Relying on the affidavit sworn by the investigating officer sergeant Waithaka, Ms. Kimani for the state submitted that the right to bail is not absolute (Article 49(1) (h). First, that the accused is a flight risk in view of the serious nature of the charge she is facing and the strong case against her. Secondly, that the accused has no known place of abode since she is no longer a resident the student's at the time of commission of the alleged offence.

The 3rd ground raised is that of hostility against the accused from fellow students should she be released on bail. And lastly that accused is likely to interfere with witnesses who are well known to her. It was alleged that the husband of the accused has tried to contact at least a witness, one Hilda Kavinya Titus.

I have considered the submissions made herein by both the defence sides and the prosecution sides. I have also perused the probation officials report filed herein upon the request of the prosecution. Same is dated 6.2.2020.

Indeed, it is agreed by both sides through the submissions made, that Article 49(1)(h) guarantees the right to bail to an accused person but that the said right is not absolute and may be denied should there be shown any compelling reasons. This, to me, are reasons that are grave enough as to justify the denial of this right to an accused person. And the burden of proving the existence of these reasons fall squarely on the shoulders of the prosecution.

I must say that this was short application. I shall only therefore make a few observation in determining whether the prosecution indeed showed any compelling reasons as required by Article 49(1)(h):-

- i. On the issues of the seriousness of the offence and the likely sentence that the same carries, there is no doubt that this is a serious offence. However, this alone cannot be a good reason for denial of bail since the right to bail under Article 49(1)(h) is a right available to all accused's irrespective of

the nature of the charges.

ii. On the issue of whether or not the accused has any known place of abode, it is on record that she stays at a hostel. She is married and the prosecution has also alluded on her own husband. The probation officer's report also refers to interviews with her parents and even village chief.

iii. On the issue of security of the accused in case of release on bond, absolutely no evidence was shown to prove the existence or possibility of such threats to the life of accused should she be released on bond. In any case, the probation officer's reports shows a possibility that accused was not staying at the university hostels, but rather hostels in the neighbouring of the university.

iv. On likelihood of interference of witnesses, this to me remained a mere allegation made by the prosecution.

The right to bail is primarily available to an accused so that the accused is able to attend court for his/her trial. Whether or not the court would grant and or declare this right would depend on the circumstances of each case. I rely on this finding on the case of Godfrey Madegwa & 6 others (2016)eKLR.

Considering all the circumstances of this case, I am not convinced that the prosecution has proved any compelling reasons as to enable this court deny the accused the right to bail. I accordingly dismiss the prosecution objections. I order as follows:

- i. The accused may be released on a bond of Ksh.2 million with 1 surety of similar amount.
- ii. The accused is ordered never to interfere with any prosecution witnesses, contact the said witnesses either directly or indirectly, personally or through any proxy or relative.
- iii. The accused to attend court at all times as and when ordered to do so by the court till determination of this case.

Orders accordingly.

Ogembo D. O.

Judge

19.2.2020

Court:

Ruling read out in open court in the presence Mr. Omari for the accused, the accused and Ms. Kimani for the state.

Ogembo D. O.

Judge

19.2.2020