



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER 32 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

BETTY YEGON.....ACCUSED

RULING (BAIL PENDING PLEA)

On 27th August 2020, the DPP filed an information on behalf of the Republic stating that Betty Yegon, the named accused person was charged with the offence of **Murder Contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars as set out were that on the 24th of July 2020 at Mau Summit Police station in Kuresoi North Sub-County within Nakuru County she murdered Gilbert Kipng'eno Yegon.

The accused appeared before the Deputy Registrar on the same date who read the statement to the accused. The accused informed the court that she had an advocate.

In response the Prosecutor stated that her '*mental assessment has already been made –we pray that the accused be remanded at the Nakuru GK Women*'.

The Deputy Registrar then proceeded to order that '*accused to be remanded at the GK Women Prison Nakuru. Mention on 9th September 2020 for plea.*'

On 31st August this application for bail pending plea was made under certificate of urgency and within the Recess rules.

It is supported by the affidavit of the accused person, and the submissions of Mr. Bore Advocate for the applicant. It is opposed by the DPP through Ms. Odero and the affidavit of No. 237047 Frida Tune.

The main grounds for the application were that;

- 1. The Deputy Registrar made no directions regarding the applicant's bail while remanding her in violation of her right to bail under **Article 49(1)(h) of the Constitution** and her fundamental rights.*
- 2. That the applicant was suffering from a kidney ailment requiring urgent specialised treatment. This was supported by annexures of treatment notes to her affidavit.*
- 3. That she stood the risk of contracting the Covid 19 Virus(Corona).*
- 4. That her two daughters both aged below thirteen (13) years, and now without a parent (the deceased was her husband) were vulnerable and at risk of molestation by sex pests vide reports of rising cases of defilement geared by the Corona Pandemic.*

In opposing the appeal, the state argued that it was prudent that a proper bail hearing be conducted before the applicant could be set free on bond and set out the following grounds;

- 1. That the applicant's kidneys were normal as indicated by her own annexures.*
- 2. That her abode was unknown, and if released there were chances that that would not be known.*

3. That her mental status was unknown hence she could not be released on bond.

4. That she if released she would cripple the case for prosecution yet there was sufficient evidence she had committed the crime.

The applicant relied on the case of **Sarah Wairimu Kamotho vs Republic [2019] eKLR** citing **Michael Juma Oyamo [2019] eKLR** where the Court of Appeal adopted the definition of compelling reasons by the High Court in **Jakton Malende and 3 others Criminal Case No. 55 of 2009** as follows:

“... The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by the Constitution.”

In responding to the alleged overwhelming case for the prosecution, Counsel also argued that witness statements were not evidence unless the applicant had admitted their contents. He relied on **Michael Juma Oyamo case** where the same Court stated as follows:

“..... we must state that evidence as contained in the witness statements before it has been subjected to cross examination and careful analysis thereafter bears very little weight, unless where an accused person has expressly and voluntarily admitted the correctness of the witness statements.”

I have carefully considered the rival submissions. It is correct that an accused 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.**

Are there forceful and convincing reasons to make the court feel very strongly that the accused should not be released on bond upon?

Preliminaries: This application was provoked by the Deputy Registrar’s orders of 27th August 2020. It is correct that the applicant could not have taken plea before the Deputy Registrar but the Deputy Registrar had the duty to have the case placed before a judge at the earliest so that the issue of bail could be canvassed. There was a Judge on duty who would have given directions. In addition, the Deputy Registrar had the duty to find out from the accused at that stage whether she had representation and if not to assign her counsel. It was not clear why the applicant had to be remanded for that long yet the prosecutor is on record stating that the applicant’s mental status had already been ascertained.

The Application: The applicant is entitled to be released on bond unless there are compelling reasons. The applicant did not have to give any reasons for the application, as bail had not been opposed by the prosecution. It was up to the prosecution to establish any reasons for the objection. However, having filed the application and given reasons, I had to consider the same.

The medical report filed by the applicant: It says that her kidneys are normal. Not my words or those of the prosecutor. Hence the medical card fails.

The risk of her contracting Corona because of an underlying condition equally fails. In any event there is a strict quarantine policy in the remand prison.

For the Prosecution: I do not hear in their arguments that the applicant should NOT be released on bond or bail, but that she should first take plea and a proper bail hearing be conducted taking into consideration the charge she is facing. All their other concerns, of fixed abode, of mental status will then be addressed.

For now, I make the following orders:

1. That the applicant be produced to take plea as soon as the quarantine period is over.
2. The State to follow up on the Psychiatrist’s report to enable (1).
3. The Probation and After Care Services Nakuru to avail a Pre Bail Report on the Accused within 14 days hereof.
4. The order for bail/bond to await (3) above.

Dated, delivered and signed at Nakuru this 9th Day of September, 2020.

Mumbua T Matheka

Judge

In the presence of: Via ZOOM:

Mr. Bore for the applicant

Ms Vena for State

CA Edna

Further Order:

1. Mention on the 15th of September 2020 for Plea.
2. The order for PBR be served accordingly.

Mumbua T Matheka

Judge

9/9/2020