

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL CASE NO 16 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

1. JANE WANJIRU MACHARIA

2. CHARLES MACHARIA.....ACCUSED

R U L I N G

1. The Accused persons herein, **JANE WANJIRU MACHARIA** and **CHARLES MACHARIA**, are charged with *murder* contrary to **section 203 as read with section 204** of the *Penal Code*. It is alleged in the charge that on 04/12/2018 at about 2.00 am in *Nanyuki Town* within *Laikipia County*, jointly with others not before court, they murdered one **GEORGE GACHIBI KAREGWA** (hereinafter called the Deceased). They pleaded not guilty and their case is already scheduled to go to trial.

2. In the meantime an issue has arisen, whether or not the “*victim*” should be heard, independently of the prosecution, in matters bail for the Accused persons. It is the submission of the learned counsels for the “*victim*” and the prosecution that the victim should be heard. The view of the learned counsel for the Accused persons is, however, that whereas the “*victim*” is recognised by law, audience may be granted in proceedings, subject to fulfilment of certain requirements set out in the law. He further submitted that in order to avoid duplicity, the concerns of the Deceased’s family should be channelled through the prosecution as such duplicity would cause delay in the realization of the Accused persons’ constitutional right to bail.

3. I have considered the submissions of the learned counsels appearing, including the cases cited. It is common ground that the “*victim*” in this present case is the family of the Deceased. Though no particulars of the Deceased’s family have been given, I note that one **CHRIS KARIUKI**, who has described himself as a brother of the Deceased, has sworn a replying affidavit in response to the Accused persons’ quest to be admitted to bail pending their trial.

4. I have read closely **Article 50(7) and (9)** of the *Constitution of Kenya, 2010* and also the *Victim Protection Act, 2014* (the Act) enacted under authority of **Article 50(9)** aforesaid of the Constitution. It is quite clear that the Constitution at the quoted Article, and also the aforesaid legislation, have defined, expanded and consolidated the parameters for participation in criminal and other proceedings by victims of offences. In criminal proceedings particularly, a victim has the right to be fully kept in the picture of the entire process of trial (**section 9(1)**) of the Act), and where the personal interests of the victim have been affected, the victim may participate in the proceedings as the court may deem fit (**section 9(2) (a)**). The court must however ensure that the victim’s participation in the proceedings is not prejudicial to the rights of the accused or inconsistent with a fair and impartial trial (**section 9(2) (b)**).

5. The law pertaining to the current discussion was looked at and analysed by my learned brother, **W Korir, J** in the case of ***Gideon Mwitii Irea – vs – Director of Public Prosecutions and 7 Others [2015] eKLR*** quoted by the Victims’ learned counsel. I respectfully and fully ascribe to the findings of law in that decision.

6. Regarding the matter at hand, it cannot be said that the family of the deceased in a murder case have no personal interest in whether or not the accused should be admitted to bail. I will therefore permit the Victims in the present case to participate in the bail proceedings. I must caution however that the court will not permit duplicity or protraction that is likely to compromise the Accused persons’ constitutional right to trial without unreasonable delay (**Article 50(2) (e)** of the Constitution). It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 2ND DAY OF APRIL 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 3RD DAY OF APRIL 2019