



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 43 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

REGINA WAMBUI NJOROGE.....ACCUSED

RULING

1. By a ruling dated 13/12/2017 Justice Lesiit declined to release the Applicant on bond and held as follows:-

*“20. In **REPUBLIC v RICHARD DAVID ALDEN, CRIMINAL CASE NO. 48 OF 2016** I ruled that mere relationship between accused and potential witnesses especially where it was not final (sic) was not sufficient to deny bail. In this case the relationship between accused and the witnesses is a blood relation. I considered the added fact that the potential witness is a younger sister of the accused. I find that given the facts and circumstances of this case, there is a real possibility of interference. The best way to safeguard same is to decline bail until the evidence of that witness is taken . . .*

24. In conclusion I find that due to the blood relationship between the accused and one of the key witnesses for the prosecution and given the fact the said witnesses is younger than the accused, that the likelihood of interference with that witness cannot be overruled.

25. Accordingly, I decline bail for now until the evidence of that witnesses is heard. Thereafter the accused may review her application for release on bail.”

(Emphasis added)

2. It is that ruling which has triggered this application the court having taken evidence from six (6) prosecution witnesses including the sister of the accused who testified as **PW4**. Mrs. Kinyori for the accused made an oral application for the court to re-look at the issue of bond to which Ms. Wegulu the Prosecuting Counsel stated that she had no objection to the accused being released on bond.

3. The court in compliance with the Bail And Bond Policy Guidelines called for Pre-bail report in which the following issues were noted:-

a. The accused’s father is reported to had abandoned and deserted the family seventeen (17) years ago. The accused dropped out of school at class six (6) before working as a house help in Olkalau and later on moved to Nairobi.

b. On Victim Impact Statement, the parents of the victim feels that the accused should not be given bond since she can easily disappear without trace as she did not have any identification documents at the time of her employment. They feel that there is likelihood of the accused and her family interfering with the case as they started to do so from the initial report from Victory Hospital. It was stated thereon that upon the arrest of the accused someone purporting to be her father had attempted to assault the father of the deceased and threatened to kill him.

c. In conclusion it was stated that the mother of the accused had promised to personally take responsibility of escorting the accused to court should she be released on bond while praying for free bond. The probation officer formed an opinion that without surety the Applicant’s chance of absconding are high.

d. The court has so far heard the evidence of six (6) prosecution witnesses and whereas the accused is presumed to be innocent until proved guilty, which therefore means that the issue of her guilt or otherwise is not an issue in the application herein, one of the consideration which the court must have in mind while dealing with the application for bond at this stage is the strength of the evidence adduced so far. This position is fortified by **Section 4.9 (b)** of the **Bail And Bond Policy Guidelines** which provides

thus:-

(b) The strength of the prosecution case. An accused person should not be subjected to pretrial detention where the evidence against him or her is tenuous, even if the charge is serious. Conversely, it may be justifiable to subject an accused person to pretrial detention where the evidence against the accused person is strong. For example, where all the prosecution witnesses have testified, and the accused person is aware of the weight of the prosecution's case against him or her, it is presumed that such a person has an incentive to abscond and should therefore be denied bail."

5. Whereas the witnesses whose testimony the court needed to secure before the accused renews her bond application has since testified, I have taken into account the fact that most of the prosecution witnesses have testified against the accused and she now knows the case against her and in view of the probation officer's report wherein the family of the accused are seeking free bond which the report considers not safe, granting the accused term bond will be an exercise in vain as there is no possibility of her mother securing the same.

6. Whereas the primary consideration in granting bail is to secure the attendance of the accused at her trial, in view of the conclusion drawn by the probation officer and having noted that this case is at the tail end, it will not be safe to release the accused on bond at this stage. I therefore decline to grant the orders sought. The same shall remain in custody until the conclusion of this case and it is so ordered.

Dated, delivered and signed at Nairobi this 21st day of May, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Mrs. Kinyori for the accused

Accused – present

Court assistant: Karwitha