



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

CRIMINAL CASE NO. 15 OF 2019

LESIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

GRACE MUTHONI KAMAU.....ACCUSED

RULING ON BAIL

1. The accused person **GRACE MUTHONI KAMAU** is facing trial for one count of murder contrary to **section 203** of the **Penal Code**. She is alleged to have murdered one **GEOFFREY KARIITHI WANJIKU** on 2nd March 2019.
2. Mr. Nyaberi learned counsel for the accused made an oral application to have the accused released on bail pending trial. The prosecution filed an affidavit in response opposing the application necessitating the accused to file a replying affidavit dated 29th April 2019.
3. Counsel for the accused premised the application for bail on **Articles 49(i), (h) and Article 50** of the **Constitution**. Counsel further relied on the accused replying affidavit and urged that the prosecution had not laid out any compelling reasons to have the accused denied bail.
4. Counsel urged that the contention by the prosecution that the accused would interfere with investigations and witnesses as there were suspects yet to be apprehended as being farfetched. Counsel urged that the accused had already deposed that she was not an employer to anyone and neither had she been approached or declined to help with investigations.
5. Learned Prosecution counsel Ms. Onunga opposed the application and adopted the affidavit sworn by the Investigating Officer deposing that three suspects were yet to be apprehended. Counsel urged that were the accused to be released on bail, she was likely to interfere with the investigations and together with the suspects at large, they would abscond court. Counsel further urged that the accused was likely to interfere with the key witness in this case who was a frequent customer at her club if released on bail.
6. This court called for and received a Pre-Bail report on the accused dated 24th April 2019. The report gave the accused detailed background and circumstances and highlighted the fact that the family of the accused having vouched for her, were willing and ready to secure her release on bond and undertook to ensure she attended court.
7. The Victim Impact Statement from deceased family on the other hand described the hardships that have befallen them after the demise of the deceased. The wife described the lengths to which they have been gone as a family including parting with their assets so as to try and offset a hospital bill amounting to 3 million Kenya shillings. She urged that they yearned for justice against the person responsible for the murder of the deceased.
8. **Article 49 (i) (h)** of the **Constitution** of Kenya provides that

“an arrested 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.”
9. **The Bail and Bond Policy Guidelines at Paragraph 4:9** sets out what the court should consider in order to determine whether there exist compelling reasons to deny bail. These are:

a) Nature of charge or offence and seriousness of the punishment.

b) The strength of the prosecution case.

- c) **The character and antecedents of the accused persons.**
- d) **The failure of the accused person to observe bail or bond terms.**
- e) **The likelihood of interfering with witnesses,**
- f) **The need to protect victims of the crime.**
- g) **The relationship between accused and potential witnesses.**
- h) **The best interest of child offenders.**
- i) **The accused person was a flight risk.**
- j) **Whether the accused person was gainfully employed.**

10. Granting bail entails striking of a balance between conflicting interests whilst considering the rights of the applicant who is to be presumed innocent pending trial and the need to secure the accused attendance at the trial and the need to maintain the integrity of the judicial process. There are also other factors to consider like threats to public order, peace and security and the impact granting bail may have on the future conduct of the case.

11. The burden of proving that there exists compelling reasons to warrant the accused being denied bail/bond rests with the prosecution. In this case, the prosecution has alleged that the accused will interfere with investigations and witnesses upon release on bail. Counsel for the accused has urged that the alleged suspects are not known to the accused.

12. I find that the issues raised in the affidavit by the Investigating officer are mere allegations which cannot be construed to qualify to constitute compelling reasons. Rather issues raised are concerns which can be taken care of by imposing suitable bail terms to ensure accused attends court and adheres to the bond conditions set. I am not satisfied that on a balance of probabilities there exists compelling reasons that justify the denial of bail in this case.

13. If the prosecution fails to prove the existence of compelling reasons, then the failure should be in favor of granting the accused bail.

14. Accordingly I allow the application and order as follows:

- a) **The accused may be released on a cash bail of Ksh.200,000/= with one surety of Ksh.50,000/=.**
- b) **In the alternative the accused may be released on a bond of Ksh.500,000/= with one surety of similar amount.**
- c) **The accused is warned not to approach whether directly or through proxy potential witnesses in this case, or to intimidate, threaten or confront any of them in any way.**
- d) **The accused is warned that in the event she breaches any of the above terms, she stands to have her bail cancelled.**

DATED AT NAIROBI THIS 16th DAY OF MAY, 2019.

LESIT, J

JUDGE