



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 6 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

SIMON OBWOCHA ONYANDO.....ACCUSED

RULING

1. The accused faces a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars of which were that on the 7th day of January 2019 at about 5.00 p.m. in Riruta Satellite Area within Nairobi County murdered **MIRIAM ASHLEY**.
2. He pleaded not guilty to the charges and in compliance with the provisions of **Article 49 (1) (h)** the court on 23rd January 2019 called upon the prosecution to file an affidavit if any should they have compelling reasons to present to court with leave granted to the accused to file a response thereat. The court further in compliance with Bail/Bond Policy Guidelines ordered for Pre-bail report to be presented for consideration.
3. In compliance with the said order the State on 7/2/2019 filed an affidavit through **PC JUDITH AGORO** in which she deponed that two of the witnesses in the case were minors and siblings of the deceased who were known to the accused and there was therefore chances of the same interfering with or exerting pressure upon them which would undermine their evidence.
4. In response the accused on 20/2/2019 filed a replying affidavit in which he stated that he was a student at Kenyatta University whose family resides in Kisii County and had no intention of relocating from the country. He deponed further that he had a constitutional right to be presumed innocent until the contrary is proved.
5. On the Pre-bail report it was stated that both parents of the accused were farmers at Botuta Village. The accused joined Kenyatta University in September 2016 to study Bachelor of Education and was a third year student at the time of the commission of the offence and therefore wished to continue with his studies as he awaits trial. He was to complete his studies in December 2020.
6. On the Victim Impact Statement it was stated that the victim was aged four years old, the accused was her mother's boyfriend. They were in the process of breaking up which the accused did not welcome and threatened to kill all including the children if the mother did not forgive him. The mother of the deceased is opposed to the accused being released on bond since he is suicidal and will harm himself. She believed that if released on bond the accused will threaten her security and that of the children who are school going.
7. The accused's student status was confirmed through a letter dated 25th August 2019 signed by the Acting Registrar (Academics).
8. The State through Mr. Naulikha opposed the release of the accused on bond and submitted that the eye witness was a minor who knew the accused and therefore the accused should not be released on bond. The accused through Mr. Omeke submitted that he was not a flight risk and that the minor witness was under the legal custody of the mother. The accused was a student at Kenyatta University and will stay at the campus away from the witness.
9. Bond is a constitutional right of every accused person which can only be limited where there exists compelling reasons to enable the court do so.
10. One of the general principles set out by the Judiciary in the **Bail and Bond Policy Guidelines** at **3.1. (e)** is that bail deprivation must balance the right of the accused persons and the interest of justice. The judicial officers should endeavor to preserve the liberty of an accused person who is presumed to be innocent and should be allowed to keep the fabric of his/her life intact by, for example maintaining employment and family and community ties.

11. In this cause the only compelling reason advanced in the Pre-bail report is that one of the intended witnesses is a minor whose evidence is likely to be interfered with by the accused. In addressing the issue of interference with witnesses, Justice Korir in the case of **REPUBLIC v DWIGHT SAGARAY & OTHERS, HIGH COURT CRIMINAL CASE NO. 61 OF 2012 MILIMANI**, had this to say:-

“For the prosecution to succeed in persuading the court on this criteria however, it must place material before the court which demonstrate actual or perceived interference. It must show the court for example the existence of a threat or threats to witnesses; direct or indirect incriminating communication between the accused and witnesses; close familial relationship between the accused and witnesses among others..., at least some facts should be led to the court, otherwise it is asking courts to speculate.”

12. The prosecution has not placed before court any evidence to support the contention of the likelihood of the accused interfering with the said witnesses either directly or indirectly. The only contention is that the accused was a boyfriend of the mother of the deceased and there is no evidence that they were living together at the time and whether he intended to go back to Riruta Satellite upon being released on bond.

13. I have taken into account the fact that the accused is a student at Kenyatta University as confirmed through a letter from the said Institution. It is in the best interest of the accused to continue with his studies during the period of his trial so that if the court at the end of the trial finds him not guilty, he shall have maintained the fabrics of his life by completing his studies.

14. Whereas the accused is facing a serious offence of murder of an innocent child, am in agreement with the dicta of the Supreme Court of India in the case of **MOHAMMAD GIASUDDIN v STATE OF ANDHRA PRADESH [1977] 3SCC 287** where it was stated as follows:-

“If every man has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the world treasury of criminology... whole man is a healthy man and every man is born good. Criminality is a curable deviance. The morality of the law may vary, but is real. The basic goodness of all human beings is a spiritual axiom, a fall- out of the advaita of cosmic creation and the spring of correctional thought in criminology.”

15. I have therefore come to the conclusion that the accused should be granted bond so as to enable the same continue with his education while attending trial, with the court putting appropriate conditions and terms to enable it preserve the evidence and the testimony of the minor witnesses herein. I will therefore grant the same bond upon the following terms and conditions:-

- a) ***To be released on bond of Kenya shillings five hundred thousand (Kshs.500,000/-) with two sureties of similar amount.***
- b) ***The accused upon his release shall report immediately to the Registrar Academics at Kenyatta University who shall assign him to the supervision of the Counselling and Guidance Department of the said University and a report thereon presented to court within seven (7) days of such report.***
- c) ***During the period the accused shall be on holiday, he shall report to his home location Chief immediately in the company of either his father or mother and the said Chief shall file a report to that effect when the accused is going back to campus at the end of the holiday.***
- d) ***The accused shall not go back to Riruta Satellite during the pendency of this trial.***
- e) ***The accused shall make no contact in whatever form, either directly or indirectly with the mother of the deceased and or any of her children, relatives and friends unless the same is done in the presence of the Investigating Officer in this cause.***
- f) ***After every Semester the accused shall file with the Deputy Registrar of this court a copy of his transcripts and a report from the Guidance and Counsellor assigned to him by the University.***
- g) ***In default of any terms and conditions herein the accused bond shall stand cancelled without any further order of the court. It is so ordered.***

Dated, delivered and signed at Nairobi this 11th day of July, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Mr. Omengo for the accused

Accused present

