



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

HIGH COURT CRIMINAL CASE NO.19 OF 2019

REPUBLICPROSECUTOR

VERSUS

1. BRENDA WANJIRU MUKAYA1ST ACCUSED

2. ALLAN MUCHANGI MUNUHE.....2ND ACCUSED

3. MAUREEN WAMBUI IRUNGU.....3RD ACCUSED

4. JOSEPH WERU WAIRIMU.....4TH ACCUSED

5. PETER KAIRIE NJAU.....5TH ACCUSED

RULING

1. The matter was coming up today for hearing of the application for bail. When the accused persons took plea on 10/9/2019, the Court prompted the investigating officer to comment on whether he opposed bail and he answered in the affirmative. However, no affidavit in opposition to bail had been filed. The Court therefore directed him, one Sergeant Pius Kasani to file an affidavit in opposition to bail/bond and further ordered that a pre-bail probation officer's report be failed.

2. When the matter came up for hearing today, the investigating officer who was present in Court in casual manner stated that he did not file the affidavit in opposition to bail because he was away doing other things. He did not disclose what "these other things" he was engaged in were.

3. At the same time, one M/s Wamere, a Probation Officer was in Court. She informed the Court that she had not filed the pre-bail probation report because the notice was short. She said she had only interviewed the accused persons and required two weeks to interview the deceased's family.

4. The investigating officer on being asked by the Court stated that he would be opposing bail on grounds of security of the accused persons. He named the 1st and 3rd accused persons as co-villagers with the deceased; and therefore feared that if they are released on bail/bond their lives would be in danger.

5. This is a case neither the prosecution nor the investigating officer should be opposing bail. The investigations as confirmed by the investigating officer are complete. All committal bundles have been served and a hearing date set. In fact, I recall that on 10/9/2019 the investigating officer was even in difficulty stating what reasons he shall be advancing in opposing bail. No wonder, the affidavit was not ready today and the reasons for not filing it are unsatisfactory.

6. It is true that the Court ordered for filing of a pre-bail report which is not ready as at date. It is true that the notice may have been short. But the discretion to grant bail squarely lies with Court and unless there are compelling circumstances, bail must be granted as a matter of right. Again, the Court is not bound by the pre-bail report. A Court must have in mind that it is conferred with the power to exercise the right to bail judiciously.

7. In the instant case, the only pointer that bail shall be opposed is on account of security of accused 1 and accused 3. This can be cushioned by putting in place measures barring the two from setting foot in the village as the Court awaits the filing of the pre-trial report. It is unfortunate that the investigating officer cannot concede to bail for the accused persons who, *per se*, are not exposed to a security risk. Interestingly, the prosecution is entirely relying on what the officer will say.

8. It is noteworthy that all the accused persons are relatively young. The 1st and 3rd accused persons are waiting to graduate from university. The 2nd accused is a student at Murang'a Technical University. The 4th and 5th are working but relatively young. They have not been cited as being a flight risk. They have no risk of interfering with witnesses. There is therefore a guarantee that they shall attend Court when and if required. I find that there are no compelling reasons to warrant their further detention.

9. I underscore that the right to bail to an accused person under Article 49(i)(h) of the Constitution must not be denied unless there are compelling reasons. As observed above no compelling reasons have been advanced to warrant a denial of bail. In fact, it seems to me that the prosecution's team is opposing bail as a matter of course. This is very unfortunate.

10. Finally, the circumstances of the case are not so graved to warrant the vehement denial of, or opposition to, bail. I have flipped through the witness statements. The deceased met her death in very unfortunate circumstances. She accompanied friends amongst them the accused persons to a drinking beige after a graduation ceremony. She fell sick at night and died later in a hospital. As to the cause of death and by whom is a matter for determination by the trial Court. All the same, it is clear that it is a case that does not warrant the continued holding in custody of the accused persons.

11. In the end, I rule that there are no good grounds on which the accused persons should continue to remain in custody. As the Court awaits the filing of a pre-bail report, I release each one of them on a bond of Kshs.500,000/- with one surety of a similar amount. The 1st and 3rd accused persons must not set foot in their village in the meantime. The bond is subject to review or cancellation once the pre-bail report is filed.

12. Mention on 7/10/2019 to confirm filing of the pre-bail report and for directions on hearing of review of the bail terms.

DATED AND DELIVERED AT MURANG'A THIS 13TH DAY OF SEPTEMBER, 2019.

GRACE NGENYE – MACHARIA

JUDGE

In the presence of:

1. Mrs. Kariuki for the 4th accused and h/b for Mr. Mwaniki for the 1st and 3rd accused and Mr. Cheche for the 5th accused.
2. Mr. Mutinda for the Respondent.