

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 33 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

PATRICIA MBITHE MWOLOLO.....ACCUSED

RULING

1. Patricia Mbithe Mwololo (the “Accused Person”) was arraigned in this Court charged with murder contrary to section 203 as read together with section 204 of the Penal Code. She is accused of unlawfully killing David Ongeri Onchere on the night of 7th and 8th July, 2019.

2. Plea was not taken immediately owing to Court recess but she duly denied the charges when the Information was formally read to her on 09/08/2019. The State denied bail and a bail hearing was scheduled.

3. At the bail hearing, the Prosecution’s main thrust is that the Accused Person is a flight risk and that she is likely to abscond if granted bail. A detailed affidavit by Sergeant Andrew Samoei, the Investigating Officer laid down the fear for the Prosecution’s apprehension. In essence, the allegations are that the offence was committed on the night of 7th and 8th July, 2019 in Njoro sub-county of Nakuru County. However, it is alleged that the Accused Person fled the scene immediately after. This led to a “man-hunt” for her. The search for her took DCI officers all the way to her home in Mbooni but she was not to be found there.

4. According to the affidavit, the Accused Person was only apprehended in Kibra informal settlement scheme on 23/07/2019 – more than two weeks after the alleged murder was committed. The affidavit claims she was found in a hide-out.

5. Ms. Cherutich, Counsel for the Accused Person, accepts that the Accused Person was only apprehended on 23/07/2019 but denies that she was in a hide-out. She represented that the Accused Person had attempted to commit suicide immediately after the incident leading to the death of the Deceased in the case and that her parents came and took her to their house in Kibra for care and protection. She denies that the Accused Person is a flight risk.

6. There is no question that bail is a constitutional right enshrined in Article 49(1)(h). An Accused Person can only be denied bail if there are compelling reasons. Hence, the Constitutional standard for denying bail is “compelling reasons” test. The burden is on the Prosecution to establish the existence of the “compelling reasons” that would justify denial of bail. Our emerging jurisprudence is clear as to the kind of evidence needed to establish the “compelling reasons”: the evidence presented must be “cogent, very strong and specific evidence” and that mere allegations, suspicions, bare objections and insinuations will not be sufficient. See, for example, ***R v Muneer Harron Ismail & 4 Others [2010] Eklr*** and ***Danford Kabage Mwangi (supra)***. However, it is also true that the standard of proof required is on a balance of probabilities. There is no requirement that the Prosecution proves the compelling reasons beyond reasonable doubt. Indeed, such a standard would be impossible to meet at this point in the trial. See, ***Bail and Bond Policy Guidelines*** at p. 19.

7. The question presented here, then, is whether the Prosecution has, on a balance of probabilities, raised compelling reasons to deny bail. The likelihood that an Accused Person will abscond if granted bail is, perhaps, the strongest compelling reason for denying bail. In this case, I am persuaded, on balance, that the Accused Person is a flight risk. It is not denied that she left the scene of the incident around 08/07/2019 and was not apprehended until 23/07/2019. No one knew about her whereabouts at that time. If it is true that she was simply receiving care and protection from her parents, nothing would have been easier than for the parents to inform the authorities as such. It is also telling that she was not found at her ancestral home but in Kibra in Nairobi.

8. It is, therefore, my view, that the Prosecution has established well-founded fear that the Accused Person may abscond if she is released on bail. This well-founded apprehension that the Accused Person might not turn up for trial coupled with the seriousness of the charge the Accused Person is facing is sufficient to give the Court pause that there is a real likelihood that the Accused Person might abscond. That is the single most important factor in determining whether to grant bail or not and constitutes a compelling reason to deny bail. On that score, bail is denied. However, the case shall be listed for hearing on a priority basis on account of this denial of bail. The Accused Person shall continue to be held in custody during the pendency of the case or until the Court reconsiders this bail decision.

9. Orders accordingly.

Dated and delivered at Nakuru this 4th day of September, 2019.

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JOEL M. NGUGI

JUDGE