



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 11 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

VIRGINIA MUTHONI MWANGI.....1ST ACCUSED

NICHOLAS MWANGI MUTHONI.....2ND ACCUSED

RULING

1. The accused pray for bail pending trial.
2. Their learned counsel, Ms. Kimani, submitted that there were *no* compelling reasons to deny the 1st accused bail. But she was *non-committal* about the circumstances of the 2nd accused.
3. The Director of Public Prosecutions only opposed the release of the 2nd accused.
4. The overarching objective of bail is to ensure the accused *attends* trial. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported).
5. It is a truism that the accused is presumed *innocent*. Under **Article 49 (1) (h)** of the **Constitution**, an accused person is entitled to bail *unless* there are *compelling* circumstances.
6. Other relevant matters to be considered by the court include: the nature of the charge; the likely sentence; previous criminal records, the *views* of the *family of the victim*, the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.
7. In addition, the **Victims Protection Act 2014** requires the views of victim's family to be taken into account at this stage. The deceased's brother, *Kamau*, and his wife, *Wangari*, are still grieving the loss of their relative. The latter was emphatic in her objections to the release of both accused. It is not lost on me that *Kamau* and *Wangari* are listed as *witnesses* in this case.
8. The accused face a grave charge of *murder*. The Director of Public Prosecutions informs the High Court that on 5th June 2019 at Gitugi Location within Murang'a County they jointly murdered *Peter Maina Macharia*.
9. The *pre-bail report* dated 7th October 2019 indicates that the 2nd accused regularly smokes *bhang*; a roll a day since about 2010. He is a son of the 1st accused. From the circumstances disclosed in the committal bundle; the brutality meted out on the deceased; and, considering that the death occurred barely *four months* ago, I find that it would be highly insensitive to release the 2nd accused at this stage.
10. The 1st accused on the other hand was born in 1958. She has a serious medical condition. She used to have a relationship with the deceased until three years ago. It is *alleged* that the homicide occurred when the deceased, who was drunk, insisted on being allowed into her homestead. When he refused to leave, she sought the assistance of the 1st accused which led to the assault and death of the deceased. All those are *mere accusations* for now; the accused are still *deemed* innocent. Taking all factors into consideration, I find *no* compelling reason to deny the 1st accused bail.
11. The upshot is that bail for the 2nd accused is *refused*.
12. However, the 1st accused may be released on bail upon execution of a cognizance in the sum of Kshs 200,000 together with one surety of a similar amount. There will be *two conditions*: Firstly, the 1st accused shall not interfere with witnesses; and, secondly, she shall attend all mentions or hearings of the case. In default, her bond shall be cancelled and the surety called to account.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 22nd day of October 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

1st & 2nd accused.

Ms. Kimani for the accused.

Mr. Mutinda for the Republic.

Ms. Dorcas & Ms. Elizabeth, Court Clerks.