



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO. 6 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NANCY WAMAITHA MWANGI.....ACCUSED**

**RULING**

1. The accused prays for bail pending trial.

2. Her learned counsel, *Ms. Muritu*, submitted that the accused is presumed to be innocent; and, that **Article 49 (1) (h)** of the **Constitution** she has a right to bail *unless* there are *compelling* circumstances. She submitted further that bail would afford the accused the facilities and time to prepare her defence.

3. The application is opposed by the Director of Public Prosecutions. Learned prosecution counsel, *Ms. Gichuru*, relied largely on the *pre-bail report* dated 23<sup>rd</sup> July 2019.

4. The overarching objective of bail is to ensure the accused *attends* his 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.

8. The accused faces a grave charge of *murder*. The Director of Public Prosecutions informs the High Court that on the night of 25<sup>th</sup> April 2019 at Wanjengi Location within Murang'a County the accused killed *Jacob Macharia Mwangi*.

9. I have taken into account the *pre-bail report* dated 23<sup>rd</sup> July 2019. The parents of the *deceased* are still grieving the loss of their son. They are torn because the *accused* is their *daughter*.

10. I commiserate with the accused. But there are *three* compelling reasons for denial of bail. Firstly, the deceased was *brother* of the accused. In the social report, it is *alleged* that the accused also tried to throw *her mother* into a pit latrine before she (accused) attacked and killed the deceased. Secondly, the parents of the accused consider the accused to be violent and dangerous. They oppose her release on bond. Thirdly, close family members are *witnesses* in this trial. Given the circumstances under which the homicide occurred, and the additional information from the provincial administration, I am satisfied that there is a real *danger* of interference with the *witnesses*.

11. I thus find that there are *serious* and *compelling* reasons *not* to release the accused. Bail is *refused*.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 3<sup>rd</sup> day of October 2019.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

Accused.

Ms. M. Muritu for the accused.

Mr. S. Mutinda for the Republic.

Ms. Elizabeth, Court Clerk.