



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 44 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

ROSE WAMBUI KINYUA.....ACCUSED

RULING

1. The accused prays for bail pending trial.
2. On 24th April 2019, her learned counsel, *Ms. Muritu*, made a brief oral application for bail. The learned prosecution counsel, *Ms. Gichuru*, prayed that a *pre-bail report* be furnished to the court.
3. On 18th June 2019, the report was filed by Salome Wamere, Probation Officer, Murang'a. The Director of Public Prosecutions through Mr. Mutinda, informed the court that he was not objecting to bail.
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. 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 20th November 2018 at about 20:00 hours at Kimandi Village in Gatanga Sub-County within Murang'a County she murdered *Baby RWK*.
9. I have taken into account the *pre-bail report*. The accused is aged 41 and has four children. The last two are toddlers aged 4 and 2 years. The minors are currently under the care of a children's home. Her husband and family are willing to accept her back. They are all concerned about the welfare of the young children.
10. But hidden in all this is that the accused is charged for the murder of another *baby*. The accused has had a troubled marriage. She left her first matrimonial home when the husband was jailed. A few months later she married another man with whom she got two children in 2015 and 2017. Granted those circumstances I am concerned about the safety of the children if she is freed on bond.
11. I empathize with the accused. But that is a compelling reason for denial of bail. Bail is *denied*. In the interests of justice however, I order that the trial be fast tracked. I will grant a hearing date on *priority*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 3rd 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.