

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 3 OF 2019

REPUBLIC.....STATE

VERSUS

YVONNE MUTHEU MUTISYAACCUSED

RULING

1. The Accused herein is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on the night of 24th January, 2019 at Mjini village within Township Location, Central Division, Machakos Sub-County within Machakos County murdered **MOHAMMED AHMED** *alias* “**MBONGE**”.

2. The accused denied the charges levelled against her and matter is yet to commence for hearing. Learned Counsel Mr. Kituku filed an application dated 22/07/2019 seeking for an order that the accused herein be released on reasonable bail and bond upon such terms and conditions to be imposed by this court pending the hearing and determination of the case. The application is supported by several grounds as well as by an affidavit of the accused sworn on even date. The gist of the Applicant’s case *inter alia* is that she is by law presumed innocent until proved guilty; that the applicant will suffer irreparable harm by having to stay in custody before determination of her case; that she undertakes to avail herself to court whenever required to do so without fail, that her parents are all deceased and is left with one child who lives with her sister and who are totally dependent on the Applicant.

3. There was no response from the state either by way of a replying affidavit or grounds of opposition.

4. The application was to be canvassed by way of written submissions. However none of the parties filed the same.

5. This court directed the Machakos County Probation officer to file a pre-bail report on the Applicant herein. The said report on the Applicant is dated 1/8/2019 and comprises feedback from the Applicant’s family, deceased’s family and the community/local administration. The Applicant’s family have a positive report about her and are ready to secure her bond and support her in ensuring that she attends court. The victim’s family is said to be bitter with the accused who had threatened them during her arrest. Similarly, the community back at home is not hostile to her as she is not a threat to the villagers. However, residents of Mjini village where the incident took place maintain that the Applicant is a violent and cunning person who was rescued from an angry mob at the time of her arrest. They are worried of her safety and security of the deceased’s family.

6. I have considered the application as well as the pre-bail report. As the Applicant has already denied the offence herein, the presumption of innocence must be accorded to her. The purpose of the trial is to establish her guilt or innocence. Under Article 49 (1) (h) of the Constitution the Applicant is entitled to be released on bond/bail unless there are compelling reasons not to be released on bail/bond. The family of the Applicant have indicated their readiness to avail the requisite sureties and are also ready to ensure her court attendance. The rest of the community members appear not to have any beef with the Applicant’s quest to be released on bond. It is only the deceased’s family which appears to be opposed to the release of the accused on bond. It is understandable for the victim’s family to be bitter as there has been a loss of a family member. Again the claim that the Applicant is a violent and cunning woman who is likely to be a flight risk and be in danger if released requires some corroborative facts to support the assertions. It is noted that there was no response to the application in the form of a replying affidavit by the investigating officer. This was necessary in order to respond to the Applicant’s claim to be released on bond pending trial. It is the responsibility of the state security apparatus to ensure the security and safety of all citizens in this country. The citizens pay tax and are entitled to be accorded security. The Applicant once released is equally entitled to such security and hence the issue of fears for her safety once released should not be used as a bar to the Applicant’s constitutional right to be released on bond pending the trial. In any case the learned counsel for the state is not opposed to the Application.

7. In the result, I find merit in the Applicant’s application dated 22/07/2019. The same is allowed in the following terms:

(a) The accused/Applicant is released on a bond of Kshs.1,000,000 (one million) plus one surety of like sum.

(b) The surety to be approved by the Deputy Registrar of this court.

(c) Upon release, the Applicant is ordered to ensure that she attends court at all mention and hearing dates without fail until the final determination of the case or until further orders.

(d) In default to adhere to the above conditions the bond shall stand cancelled and the Applicant plus her surety called to account.

Orders accordingly.

Dated and delivered at **Machakos** this **1st** day of **October, 2019**.

D. K. Kemei

Judge