



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 26 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

JAMES WANYIRI WAMBUGU.....ACCUSED

RULING

James Wanyiri Wmbugu, the accused herein, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 28th day of April 2019 at Transami area in Embakasi Sub-County within Nairobi County he murdered Grace Kagure Gathua. The accused pleaded not guilty to this charge when the same was read and explained to him on 16th May 2019.

The accused seeks to be admitted to bail/bond pending the hearing and determination of this case. He filed the application seeking these orders on 14th October 2019. The application is supported by grounds that the accused will not commit any offence if released on bail; that he is not a flight risk; that he will not interfere with witnesses; that he is the sole bread winner for his family; that he has a fixed abode; that the accused lives within this court's jurisdiction and will avail himself to report to the Investigating Officer should the bond terms so require. It is further stated that the community from where he comes from is not hostile to him and that he will present himself to court when required to do so. The application is supported by an affidavit sworn by the accused on 3rd October 2019. He deposes that he suffers from stomach ulcers for which he is not receiving proper medical care while in prison custody. He deposes that he is willing to deposit security once granted bail/bond and that he is not a flight risk.

Mr. Maobe for the accused submitted in support of the grounds advanced by the accused. He further submitted that the accused is innocent until the contrary is proved and that he does not have previous criminal record and that the affidavit filed in opposition to this application makes serious allegations against the accused without proof of the same. Mr. Maobe submitted further that it is alleged in paragraph 8 of the affidavit that the accused has been threatening witnesses. Mr. Maobe told the court that this cannot be true since the accused is in custody and has no access to witnesses. Counsel took issue with the Affidavit filed by CPL Dan Kagambo that the accused will interfere with witnesses submitting that the accused will not interfere with witnesses.

The application was opposed by the prosecution. The grounds in opposition of the application are contained in the Affidavit of CPL Dan Kagambo. In paragraph 6 of that affidavit it is deposed that the accused is a serial killer and is a suspect in respect of the death of Esther Wangechi Ngunjiri and that there is an inquest in the Nyahururu Chief Magistrates' Court in respect of that death. In paragraph 8 of the affidavit it is deposed that the accused has been threatening the relatives of the deceased and this was reported and booked vide OB No. 60/30/10/2019.

Before considering this application this court called for a report from the probation officer. The report was filed on 13th November 2019. I have read the report. It shows that the family of the accused supports him. The family of the deceased however is bitter and would not like to have the accused released on bail/bond. I did not come across any information in that report that the accused is a serial killer or about the alleged inquest he is facing in respect of the death of on Esther Wangechi Ngunjiri. While the mother of the deceased indicated that the accused issued verbal threats to the family of the deceased there is no indication from that family of the deceased ever reported the alleged verbal threats nor is there connection between that allegation and the OB number given by the officer. CPL Dan Kagambo did not attach any details of the alleged inquest or the OB extract to support allegations that there was a report made against accused's threat to witnesses. I find it rather reckless for the officer to state in a sworn affidavit that the accused is a serial killer without evidence to support this.

I however do not downplay the seriousness of this offence the accused is facing. The victim too has rights just as the accused does and this court must be cautious in handling this matter to ensure that the accused does not abscond from the jurisdiction of this court. This can be taken care of in the terms and conditions of bail this court will set.

I have considered this matter and find that the prosecution has failed to convince this court that there exists compelling reasons to deny the

accused bond/bail. Consequently, I hereby allow the application and admit the accused on bond/bail on the following terms:

- (a) The accused shall execute a bond of Kshs one million (1,000,000) with one surety of the same amount.**
- (b) In the alternative the accused shall pay cash bail in the sum of Kshs five hundred thousand (500,000).**
- (c) He shall not go anywhere near the relatives of the deceased.**
- (d) He shall attend court when required to do so until this case is heard and determined.**
- (e) The accused is cautioned against intimidating or threatening witnesses and reminded that if this court were to receive any complaint that the accused has done anything that may compromise the fair trial in this case, this court shall automatically cancel the bond/bail and remand the accused in custody until this case is concluded.**

Orders shall issue accordingly.

Dated, signed and delivered this 21st day of November 2019.

S. N. Mutuku

Judge