



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI**

**CRIMINAL CASE NO. 43 OF 2017**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**MARY NZUNGI KIVOU.....ACCUSED**

**RULING**

1. The accused **MARY NZUNGI KIVOU** is charged with the murder of her husband **JEREMIAH NGALA** which occurred on 26<sup>th</sup> August 2017 an offence contrary to **section 203** of the **Penal Code**.
2. The accused was arraigned in court on the 14<sup>th</sup> September 2017. Due to the delay of the Mental Assessment Report plea could not be taken until 13<sup>th</sup> November 2017. Thereafter bail application was heard on 30<sup>th</sup> January 2018 as a result of the delay caused by the prosecution in their efforts to consult investigation on the issue.
3. The prosecution eventually indicated that it was not opposing bail. Reasons given were that the investigating officer has contacted and consulted brothers of the deceased who told him that they were not opposed to bail.
4. Mrs. Kinoti urged that the key witnesses in the case had no relationship between them and the accused or deceased in the case and therefore there was no danger of interference. Counsel urged that none of the witnesses were on Witness Protection.
5. Mr. Matwetwe for the accused urged that the accused and deceased had 2 children aged 5 years and 2 years and that both were now living with the mother of the accused in Mwingi County. Counsel urged that the two children were now suffering and the accused was desirous to be re-united with them.
6. Mr. Matwetwe urged that the circumstances of the case were that a fight broke out between the accused and the deceased which led to the deceased death. On the other hand counsel urged that the accused was a business woman dealing in shoes and before her arrest she left a good stock of shoes and capital and if released she would be able to continue with her business.
7. Mr. Matwetwe urged that there was no animosity between the families of the accused and deceased. That accused and deceased had been fighting and at one time even separated.
8. Counsel urged that family of accused had a land which 2 weeks ago was valued at KShs.300,000/= . Further that accused used to make KShs.20,000/= profit per month. He urged the court to grant accused reasonable bond terms.
9. I have considered the application for bail by way of a Notice of Motion dated 1<sup>st</sup> December, 2017. The application is premised under **Article 49(1)(h)** and **Article 50(2)(a)** of the **Constitution**. Five grounds are cited on the face of the application which are as follows:

**(1) The applicant is on trial on a charge of murder contrary to section 203 as read with section 204 of the Penal Code was arraigned in court on the 13<sup>th</sup> of November 2017.**

**(2) That trial process will still take a long time to conclude.**

**(3) The applicant is therefore requesting for bail/bond pending the hearing of the case.**

**(4) The applicant is presumed innocent until proved guilty in the eyes of the law.**

**(5) The applicant is willing to abide by the terms and conditions imposed by the court when granting bail/bond and promises not to abscond court at any time.**

10. I have considered the affidavit sworn in support of the application by the accused in this case. The gist of the affidavit has been reiterated by the defence in his submissions and supported by the prosecution counsel.

11. Bail can only be denied if there are compelling reasons. The prosecution has the onus to demonstrate the compelling reasons it puts forward as a ground to oppose bail. In this case, the prosecution has declared that none exist to deny accused bail.

12. Having considered all these facts and factors, I find no reason why accused should not be granted bail. In the circumstances I will grant bail to the accused on the following terms:

**(a) Accused may be released on a cash bail of KShs.50,000/= with one surety of like sum.**

**(b) In the alternative the accused may be released on a bond of KShs.200,000/= (two hundred thousand) with one surety of like sum.**

**(c) The accused should refrain from interfering with the witnesses of this case and must ensure she attends court if and when required.**

Those are the orders.

**DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2018.**

**LESIT, J**

**JUDGE**