



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

LESIT J

CRIMINAL CASE NO. 93 OF 2014

REPUBLIC.....PROSECUTION

VERSUS

MAUREEN WANJIRU GAKURO.....ACCUSED

RULING ON BAIL

1. The accused Maureen Wanjiru Gakuro is charged with the offence of murder contrary to section **203** as read with section **204** of the Penal Code.

2. The accused person was released on bail in 19th December 2014. Thereafter she disappeared

3. I have considered the application by Miss Gesare, the learned defence counsel. Counsel seeks the reinstatement of bond of the accused person. She told the court that on the day of forfeiture, the accused was arraigned in Kikuyu Law Courts where she was charged with Assault. Counsel urged that the later the charges of assault against the accused were withdrawn. Counsel produced a certified order of the court showing the withdrawal of an assault charge against the accused under section 204 of the Criminal Procedure Code.

4. Ms. Gesora submitted that the accused person is unwell and has a child in prison. She further told the court that the accused mother was too elderly to take care of her child. Counsel therefore pleaded with the court to reinstate bond to the accused.

5. Ms Onunga learned prosecution counsel submitted that the accused committed an offence while she was out on bail which shows the accused is not a law-abiding citizen. Counsel urged the court to find that it was not certain that the accused was not likely to commit another offence if released.

6. I have considered the submissions by both the prosecution and the defence counsels. There is no dispute that the accused was on bail in this case when she committed an offence for which she was remanded in custody. It is for that reason that her bond in this case was cancelled. In addition, when the accused was released on bail the court had given clear the terms and conditions which the accused was required to comply.

7. Paragraph 13 of the ruling quoted the case of **Ng'ang'a vs. Rep [1985] KLR 451** Chesoni, J, as he then was set out the grounds upon which bail may be refused as follows:

(a) In principle, because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:

(i) The accused will fail to turn up at his trial or to surrender to custody;

(ii) The accused may commit further offences; or

(iii) He will obstruct the course of justice.

(b) The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider:

- (i) The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;**
- (ii) The strength of the prosecution case;**
- (iii) The character and antecedents of the accused;**
- (iv) The likelihood of the accused interfering with prosecution witnesses.**

8. These are the conditions which the court relied in admitting the accused to bail.

9. The accused breached her bond terms when she committed an offence during the pendency of this case. The fact the case has been withdrawn does not redress the breach of the bond terms. Secondly the offence she committed is against the person, which is relevant to the offence she now faces.

10. The second consideration I have made in this case is the fact that this case has been fully heard and almost concluded. The accused defence has already been heard. At this stage there is nothing to be gained by releasing the accused at this stage. She should await the conclusion of the case. The application for re-instatement of the bond is declined.

11. I order further the securities deposited in satisfaction of the bond be released to the depositors. The sureties are also discharged.

DATED AT NAIROBI THIS 7th NOVEMBER, 2018.

LESIT, J

JUDGE