



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO. 29 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MERCY WANJIRU KARIUKI.....ACCUSED**

**RULING**

1. The accused prays for bail pending trial. The notice of motion is dated 22<sup>nd</sup> October 2018.
2. The application is contested by the Republic.
3. There is filed a comprehensive *pre-bail report* dated 22<sup>nd</sup> October 2018. In a nutshell, the report is *negative*.
4. Learned counsel for the accused challenged the report. She submitted that the accused is aged 25. She is a single mother. The child is aged 5 years. She recently underwent surgery in prison and her wounds have not healed. Counsel submitted that the *locus in quo* cannot be hostile as alleged in the report because the accused used to travel there from her work place in Athi River. She was only arrested a year after the homicide.
5. The learned Prosecution Counsel submitted that the family of the deceased remains bitter; that there is no medical evidence to support the claims by the accused; and, that there are compelling reasons for denial of bail.
6. The accused faces the grave charge of *murder*; but she is still deemed *innocent*. Under Article 49 (1) (h) of the Constitution, she is entitled to bail pending trial *unless* there are *compelling* circumstances. See *Muraguri v Republic* [1989] KLR 181, *Republic v Elias Kipkemoi*, Eldoret High Court Criminal Case 42 of 2014 (unreported).
7. The overarching objective of bail is to ensure the accused *attends* his trial. *Muraguri v Republic* [1989] KLR 181. 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.
8. The accused is charged for the unlawful killing of *John Paul Maina Macharia* on 11<sup>th</sup> August 2017 at Mairi Trading Centre, Kigumo.
9. It is true that the accused is a *single mother* of a young child aged 5 years. I do not think she lied about the *surgery* in prison. But I cannot dismiss off-hand the findings in the social report. The deceased for example is alleged to be her lover. There is palpable anger at the victim's home. The father of the deceased has threatened to revenge if the accused is released on bail. There is a parallel opinion by the

area chief.

**10.** The *Victims Protection Act 2014* requires the views of victim's family to be taken into account at this stage.

**11.** I commiserate with the accused. But I have reached the conclusion that her *safety* is not guaranteed at the *locus in quo*. That to me is a *compelling* reason *not* to release the accused on bail.

**12.** The application for bail is *refused*. I however direct that this case be *fast-tracked* in view of the medical condition of the accused; and, the welfare of her young son. I direct the Deputy Registrar to allocate a hearing date not later than the new court term.

It is so ordered.

**DATED, SIGNED and DELIVERED** at **MURANG'A** this 13<sup>th</sup> day of December 2018.

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

Accused.

Ms. Muritu for the accused.

Ms. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.