



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 5 OF 2018

TERESIA DORINE.....ACCUSED/APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

R U L I N G

1. **Teresia Dorine** is charged with the offence of **murder** contrary to **section 203** as read with **Section 204** of the **Penal Code**. She seeks to be released on bail pending trial on the grounds that she is **24 years** old and separated from **Richard Musau Musili**. Since **2012** she has been in employment as a **Receptionist** at **Cosmas Pharmaceuticals** at **Industrial Area, Nairobi** and in custody of their child aged four (4) years who is currently under the care of his maternal grandparents aged **62** and **75 years** respectively who have no income to sustain him.

2. In response, **No. 90707 Corporal Jeddy Thogo** swore an affidavit where she deposed that she had received information from the **Chief Kamuwongo Location** that if released the accused is likely to interfere with prosecution witnesses. That the larger society is not ready to receive the accused back given the fact that the charges she is facing touch on her family members who have since reported more threats from the accused. That she believes the accused is likely to commit more offences and or abscond given the seriousness of the charges facing her.

3. It was urged on behalf of the accused by learned **Counsel Mr. Kimuli** that the accused will abide with terms of bond even if she will be required to be reporting to **Mutitu Police Station**. That having kept a job for **five (5) years** she could not be taken to be an irresponsible person. Her child has dropped out of school as a result of her incarceration.

4. In a rejoinder the learned **State Counsel** argued that the applicant/accused is violent and has even been charged with affray having fought another prisoner. That due to her violent nature, releasing her on bail will endanger her own life.

5. The defence counsel dismissed the allegations and in particular the letter that was written by the **Chief** who clearly stated that he had learnt of the intention of the accused to be released on bail. He called upon the court to find that the alleged witnesses had already testified and the accused's mother had reported of threats by the accused's husband to kill her.

6. It is an accused person's constitutional right to be released on bail unless there are compelling reasons requiring his/her incarceration (*see Article 49 (1) (h) of the Constitution*).

7. Compelling reasons have been stated to include:-

§ the Likelihood to commit or abet the commission of a serious offence;

§ if the release of the accused can endanger the safety of victims;

§ interference with witnesses or evidence, but of importance is failure to turn up for trial;

8. In this case it is urged that the accused will interfere with witnesses who have not testified. In the case of *Republic versus Richard David Alden HCCC No. 48 of 2016*; it was held that there must be evidence of actual interference or the likelihood of interference.

9. The accused herein was the daughter in law of the deceased. At the time of his demise she had separated with his son, **PW1, Richard Musau Musili**.

10. So far **seven (7)** witnesses have testified. The remaining witnesses are **three (3)**, namely the Doctor who performed the postmortem on the body of the deceased, the arresting and investigation officer. These are not witnesses that the accused can interfere with.

11. On the 20th June, 2018, the **Chief Kamuwongo** wrote a letter thus;-

“This is to certify that the bearer of the note is Richard Musau Misili of Id No. 27177066 whose father was stabbed to death on 1/1/18 by a suspect by the name Teresia Doreen who was remanded at Kitui Prison.

The case is still going on but the public has released that the suspect is requesting to be freed on bond.

The community members have requested this office to liaise with the relevant authorities not to release this culprit since the action has brought fear, lack of peace and no trust of such character in their community.

Kindly comply.

Yours,

Mary M. Muli

Chief Kamuwongo location”

12. The information regarding the alleged public and community members is not divulged. The only individual of interest is **PW1** the bearer of the note.

13. PW1 is the accused person’s estranged husband. His father is the deceased. Their relationship is indeed sour. He does not mention anything to do with their **four (4) year** old son who is in custody of his elderly maternal grandparents.

14. In the course of the hearing of the case the accused person’s elderly mother made serious allegations against PW1 of threats to kill her and was directed to make a formal complaint to the police for purposes of investigations being carried out.

15. It is averred that the accused is likely to abscond and commit more offence. It was important for the investigation to demonstrate this particular fact. It is not enough to make allegations the way they have done in the instant case (**see Republic versus Richard David Alden** (*supra*))

16. The only issue this court should therefore determine is whether the accused shall turn up for trial.

A social enquiry was carried out by the **County Probation Office, Ms Koki Mwova**. According to her findings the family of the deceased is bitter, they object to her release on bail while the accused’s family is ready and willing to accommodate her. They do not view her as a security threat. That her community has no negative attitude towards her and the offence was committed in **Mwingi** while she hails from **Mutitu** within **Kitui** a different sub-county.

17. From the foregoing, I find no compelling reasons necessitating the accused’s continued incarceration.

In the premises, I grant her **bond of one (1) million** with a **surety** in a **similar sum**.

18. It is so ordered.

Dated, Signed and Delivered at Kitui this 4th day of December, 2018.

L. N. MUTENDE

JUDGE