

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 43 OF 2016

P M K.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant herein is a minor who was charged with murder contrary to section 203 as read with Section 204 of the Penal Code. It is alleged that on the 30th day of October, 2016 at [particulars withheld] within Machakos County, she murdered Shadrack Kioko Muasya. The Applicant pleaded not guilty to the offence. The Applicant's counsel subsequently made an oral application and submissions in Court on 11th January 2017, and also filed a Notice of Motion dated 12th January 2017, seeking for the Applicant to be admitted to bond/bail pending trial. The said application was supported by an affidavit sworn on the same date by E N K, the Applicant's mother.

The grounds for the application are that the Applicant is a 16-year old female who is currently enrolled at [particulars withheld] Secondary School, where she was in Form 2 in 2016. A copy of the Applicant's student identification card was avialed. Further, that the Applicant has been in custody for over two months from 30th October 2016 and has been held in various detention centres namely Mavoko Police Station for 22 days and thereafter at Kabete Remand Horne since 22nd November 2016 to date.

The Applicant's mother averred that they have an extensive family in Athi River and will therefore be able to secure her daughter's attendance in court as and when required if she is granted bond or bail, which would allow her to continue attending school. Further, that the Applicant suffers from asthma and the condition has been exacerbated by her detention, and she annexed a copy of a medical note from Athi River Medical Centre confirming the same.

The Applicant's counsel submitted that the Applicant has a constitutional right to bail as provided for under Article 49(h) of the Constitution and as a minor, she is also clothed with the right under Article 53(1)(f)(ii) not to be detained, except as a measure of last resort, and when detained, to be held for the shortest appropriate period of time. The counsel also relied on section 4(2) of the Children's Act which provides that in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. It was her submission that where the accused person is a minor, the denial of bail or bond is considered not to be in the best interests of the accused person, who is a minor.

Lastly, it was urged that even as a child in conflict with the law, the Applicant is still entitled to parental care and the right to continue with her education under section 187(1) of the Children's Act which provides that "every court in dealing with a child who is brought before it shall have regard to the best interests of the child and shall, in a proper case, take steps for removing him from undesirable surroundings and for securing that proper provision be made for his/her maintenance, education and training."

The Prosecution did not file any affidavit and/or oppose the Applicant's application. The issue before the Court therefore is whether the Applicants should be released on bail and/or bond and if so, on what terms. Article 49 (1) (h) of the Constitution permits the release of any arrested person including persons charged with a capital offence on bail/bond pending trial, unless there are compelling reasons not to do

so. No such compelling reason has been shown by the prosecution, and the Applicant's application is also found to be merited in light of the fact that the Applicant is a minor who is still attending school and has a medical condition, and still retains her rights to parental care, education and medical care as she is presumed innocent until found guilty.

I accordingly admit the Applicant to bail/bond pending trial on the following terms:

1. The Applicant's legal guardian shall execute a bond of Kshs. 250,000/=, and shall provide one surety of similar sum.
2. The surety for the Applicant shall be approved by the Deputy Registrar of this court.
3. The Applicant shall not have any contact with, or in any other manner interfere with the prosecution witnesses in this case.
4. The Applicant shall be required to attend court for the remainder of the trial without fail.
5. In default of orders 1, 2, 3, and 4 hereinabove, the Applicant's bond shall be cancelled immediately and their sureties called to account.

It is so ordered.

DATED AT MACHAKOS THIS 24TH JANUARY 2017.

P. NYAMWEYA

JUDGE