



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO 44 OF 2016

REPUBLICRESPONDENT

VERSUS

PAMELA INDIATSI ACHURA1ST ACCUSED

ESTHER AKINYI ANDATI.....2ND ACCUSED

RULING

1. The applicants **PAMELA INDIATSI ACHURA** and **ESTHER AKINYI ANDATI** are charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 12th day of May, 2016 at Lucky Summer in Ruaraka Kasarani Sub County within Nairobi County murdered **ALFA OKUSIMBA ACHURA**.

2. They both pleaded not guilty to the said charges and by a Notice of Motion dated 7th October, 2016 applied to be admitted to bond/bail pending the hearing and determination of this cause which application was supported by their annexed affidavits in which it was deponed that in respect of the 1st accused that she had been in custody since 13th May, 2016 and that the same has a fixed abode, married with two (2) children. It was deponed further that her father stays in Kakamega County with a family tie and is therefore not a flight risk.

3. On behalf of the 2nd Applicant it was deponed that she is a mother of two children aged 6 and 3 respectively with her father staying at Kakamega County Luvembe sub location. It was stated that the applicant works as a saloonist at Betit Salon and is therefore not a flight risk.

4. In opposition to the said application the State filed a replying affidavit through **IP EVANAS CHEA** the investigating officer in which it was deponed that the accused persons on 12th May, 2016 at about 11 a.m. went to the house of one **LUCY MIDEVA ODIERO** at Lucky Summer Estate, proceeded to pour paraffin on her and set her alight while carrying the deceased aged one (1) month on her back causing fatal injuries to the same.

5. It was deponed that there was a real apprehension that the applicants either by themselves or through proxies were likely to interfere with the prosecution witnesses who are well known to them by virtue of family ties. It was further stated that the applicants were likely to abscond the jurisdiction of the court if released on bail/bond bearing in mind the weight of the prosecution evidence.

PRE-BAIL REPORT

6. The court ordered for pre-bail report on the applicants which have now been filed and in which it was stated as follows:-

PAMELA INDIASI ACHURA

a. It was stated that the 1st accused was born on 26th November, 1980 and after her KCPE examination in 1998 has been picking on laundry casual jobs around Lavington while residing in Kibera and later Baba Dogo where she lives with her three children having separated with her husband.

b. On victim impact statement it was stated that the victim was one month old at the time of his demise and a nephew of the 1st accused whose parents expressed reservation on the release of the accused since the mother feels that the accused may be a danger to her and her children since the intention was to eliminate them should the same be released on bond.

7. ESTHER AKINYI ANDATI

a. It was stated that the 2nd accused resides alone with her two children at Kangemi one in standard two and the last born aged 2 years.

b. On the victim impact assessment it was stated that the mother and father expressed reservation at the release of the accused on bond despite pressure from the family since they feel the same may interfere with the witnesses and may be a threat to the remaining family members.

ANALYSIS AND DETERMINATION

8. Under **Article 49(1)(h)** bail/bond is now a constitutional right of every accused person regardless of the nature of the offence and is only limited when there are compelling reasons to be advanced by the prosecution unless it is in respect of an offence which is punishable by a fine only or by imprisonment for not more than six (6) months.

9. The constitution has not defined what compelling reasons are, However, **Sections 123 – 133 of Criminal Procedure Code** gives provision for bail and the Judiciary through the National Council on the Administration of Justice has issued Bail and Bond Policy Guidelines to guide the judicial officer in granting bail wherein the following are identified as guidelines 4.9

- a. The nature of the charge or offence.
- b. The strength of the prosecution case.
- c. Character and antecedents of the accused person.
- d. Failure of the accused person to observe bail or bond terms on previous occasions.
- e. Likelihood of interfering with witnesses.
- f. The need to protect the victims or victims of the crime from the accused person.
- g. The relationship between the accused and potential witnesses.
- h.
- i. The accused person is a flight risk as in where the accused is a foreigner without a fixed abode.

Among others.

10. In this matter, the accused persons are related to the victim and from the probation report there is an indication that the victim's parents are under pressure of the family to allow the release of the accused persons. This in itself is a compelling reason to enable the court deny the accused persons the enjoyment of their Constitutional Right as I am of the considered opinion and hold that if released on bond at this stage the accused persons are likely to interfere with potential prosecution witnesses and thereby defeat the cause of justice.

11. The accused persons shall therefore remain in remand custody until the father and mother of the victim and their immediate neighbours at Lucky Summer Estate have testified upon which they shall be at liberty to renew their bail application.

DATED, DELIVERED and SIGNED at Nairobi this 23rd day of January, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Mwaniki for the State

Mrs. Nyamongo for the accused

Accused present

Paul court clerk