



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL CASE NO. 43 OF 2015

REPUBLICRESPONDENT

VERSUS

CATHERINE MUTHONI WAMBUGU..... ACCUSED

RULING

1. The Applicant **CATHERINE MUTHONI WAMBUGU** is 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 17th day of February, 2016 at Korogocho Grogon 'A' village within Kariobangi Area within Nairobi County murdered **KATERINA NYAMBURA IRUNGU** and **PETER KIMANI IRUNGU**.

2. She pleaded not guilty to the said charged and on 14/9/2016 in exercise of the rights of the accused under the provisions of Article 49(1) h of the Constitution of Kenya 2010 asked the parties to address me on whether there were compelling reasons to enable the court deny the accused her constitutional right to bail pending trial.

PRE BAIL REPORT

3. The court further ordered for a pre-bail report on the suitability of the accused person being admitted to bond which has been filed and in which the following facts are recommendations were availed:

Both the parents of the accused lives in Kathii. After KCPE exams in which she scored 270/500 her aunt **MARY GACHANJA** took the custody of the accused and lived with her in Nairobi where she trained in hair dressing and embroidery and in 2013 got married to one Harrison Ngare with whom she had one child. After being charged in court the family of the accused has continued to offer the accused full support, and if released on bond and to make sure that she obeys any orders given while she stays with those in Kathii village of Kayaba location within Karatina District.

4. On the victim impact it was reported that the accused was a family friend of the parents of the two deceased children and are still traumatized by the loss of both children which has had to the breaking up of their young marriage and were therefore against the same being released on bond, it was further stated that the husband of the accused went underground when the same was charged with the killing of their only child. It was alleged that the accused had insulted the victim's family within the courts premises though this was not confirmed by the prison authority who said that the accused was an obedient inmate who always follows instructions and never causes any trouble.

SUBMISSIONS

5. It was submitted by Miss Mwaniki on behalf of the state that in addition to the charge herein the applicant is also charged with the offence of infanticide at Makadara Law Courts and that it would be in the interest of justice that the same be held in custody until the vital witnesses had testified. On behalf of the accused Mrs. Kinyori submitted that the accused did not have any criminal inclination and that a medical report by Dr. Mugo dated 21/1/2016 confirmed that the same was suffering from mental illness.

6. It was submitted that the accused if released on bond will not go back to the area where the crime was committed and is therefore not likely to interfere with witnesses. It was further submitted that he accused parent have no asset to stand surety for the same and were therefore seeking free bond.

ANALYSIS AND DETERMINATION

7. Under the provisions of **Article 49(1)h** of the Constitution of Kenya 2010, bond is a constitutional right of every accused person which can only be limited where there are compelling reasons advanced by the prosecution on a balance of probability. The main objective or primary factors for consideration by the courts while granting bond is whether the accused person will appear for trial if granted bail.

8. In this case the following factors are undisputed:- that he accused faces three charged in respect of the death of three children including her own and therefore the charges are of a serious nature taking into account the punishment to be meted out should the same be found guilty and therefore there is a possibility and incentive for the accused to abscond see **WATORO Vs REPUBLIC (1991) KLR 200**.

9. It is also clear that the accused and the potential witnesses have such a close relationship to an extent that there is a possibility of interference with the said witnesses. Further taking into account the nature of the offence herein, it is one where the court is not inclined to release the accused person on free bond and since the parents of the accused have indicated that they are unable to secure surety, granting the accused bail on terms will only be an academic exercise.

10. I therefore find and hold that there are compelling reasons as stated herein above to enable me decline which I hereby do, to release the accused on bond at this stage. The accused shall remain in custody pending the hearing and determination of this cause.

11. In the interest of justice and the welfare of the accused person I hereby order that during the period of this trial the same be put under counseling and treatment for post-natal depression and psychosis and a report thereon submitted to the Deputy Registrar of this court once after every 30 days and final full report presented to court after all the parents of the victims herein have testified for further directions on the same.

DATED, DELIVERED and SIGNED at Nairobi this **9th** day of **February**, 2017

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J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mrs. Kinyori for the accused

Accused present

Tabitha court clerk