



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 48 OF 2014

LILIAN KINANU MWIRIGI.....ACCUSED

VS

REPUBLIC.....RESPONDENT

RULING

By a Notice of Motion Application dated 27th January 2015, the accused person has sought to be released on bail/bond on such reasonable terms or condition as the honourable court may deem fit to impose pending the hearing and determination of the trial.

The gist of the application is that the accused person has been charged with the offence of murder in which she pleaded not guilty to the charge. She contends that the offence is bailable; that she is ready to comply with any terms and conditions that the court will impose; that she has young children whom she needs to take care of; that she is a resident of Kithurine, and, that she is sickly. Mr. Igweta, Counsel for the accused reiterated the contents of the affidavit in support of the application and that accused will show up for trial.

The application was opposed. Mr. Mulochi, Learned State Counsel sought to rely on an affidavit sworn by PC Henry Makokha, the investigating officer in this case. inter alia that the accused is the mother to key prosecution witnesses, that the deceased is the father, that therefore there is a high possibility, that if released on bail, the witnesses would be in close contact with the accused person who being her mother has great influence on them; that is likely to interfere and/or threaten them or commit further offences; that the right to bail/bond as enshrined in the Constitution is not absolute and is at the discretion of the court. He further contended that the accused person murdered her own husband recently; that the family needed time to recover from the loss and consequently urged the court not to admit the accused person to bond/bail.

The court called for a pre bail report. The same was filed in court on 10th March 2015. According to the report, the family of the deceased and in particular the in-laws were hostile. The hostility seems to have existed even before the murder. Those interviewed said that they had tolerated the accused person's disrespectful ways for some time and that this incident was the last straw and that she was not welcome at all in the area.

On the other hand the community members were said to be volatile in their reaction on people considered non conformists and this incident was treated as such. There was a general feeling on the ground that there could be some retaliation towards the accused if she showed up in the area. This report was said to

have been confirmed by the accused's own brothers and the said information was reportedly known to the police. In addition, the accused's conduct/character was said to be physically and verbally abusive but she is hardworking.

I have considered this application, submissions by counsel, investigating officer's affidavit and the pre bail report.

In an application for bond, the principles that the court needs to consider are inter alia;

1. That the accused will turn up for his trial, this being the primary consideration;
2. That the accused will not interfere with witnesses;
3. That there is no threat to the security of the accused;
4. The character and antecedents of the accused;
5. The likelihood of accused committing other offences;

See ***Ng'ang'a vs. Republic 1985 KLR 451.***

Even though an arrested person has Constitutional right to bail/bond pursuant to Article 49 (1) (h) of the Constitution, the said right is not absolute since the same provision provides that an arrested person shall not be released if there are compelling reasons not to release him. The Constitution does not define what compelling reasons are and each case would depend on its own circumstances.

It is evident that the prosecution witnesses are well known to the accused person, the accused being the mother to two of them. The possibility of the accused person influencing the witnesses is very likely. I note that one of the prosecution witnesses is a son of both the deceased and the accused was a minor aged 13 years at the time that the offence was allegedly committed. There is real likelihood of the child having been influenced.

Further, the offence was committed fairly recently, slightly over 8 months ago and as can be gleaned from the pre-bail Report. The incident is still very fresh in the minds of the victim's family and as such, they need time to heal and recover from the same.

In the pre-bail report, it was mentioned that since the matter is fairly fresh, there was likelihood of revenge attack on the accused and especially due to the accused's relationship with the deceased's family and the public at large.

In my opinion these are compelling reasons not to release the accused person on bond/bail. May be the accused can renew her application after the children testify. Consequently, I decline to grant accused person bail/bond in this case. The application is hereby dismissed.

Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 4TH DAY OF MAY 2015

R.V.P. WENDOH

JUDGE

In the presence of;

Mr. Muchiri for State

Mr. Igweta for Applicant

Faith Court Assistant

Accused