



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.10 OF 2014

JOYCE WANZA MUTUA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application before me dated 20th July 2014 has been filed by the accused seeking to be released on bail pending trial. It is the second such application as her first application argued on 12th March 2014 was rejected by this court vide a ruling dated 13th May, 2014.

In the said ruling, the court denied the applicant bail on grounds that the applicant was likely to interfere with some prosecution witnesses. It also took note of the findings by the probation officer that there was great tension within the applicant's wider family owing to the fact that the deceased's first wife's family blamed the accused (who is the deceased's second wife) for his death.

The present application has been brought on only one ground: that the applicant's health has deteriorated in custody. She states in her application that she suffers "several debilitating ailments including but not limited to serious adnominal infections to agonizing back problems." In a further affidavit sworn on 28th July 2014, she deposes that Dr. T. Ndeti of the Prions Health Services had recommended urgent surgery to remove her uterus. She has attached several medical reports from one Dr. Gathara and the Aga Khan Hospital respectively showing her medical history prior to incarceration.

At the hearing of the application on 29th September, 2014, **Mr. Kaikai** for the applicant submitted that his client was in need of urgent specialized medical attention and urged the court to temper justice with mercy and grant her bail.

The State has categorically opposed the application. It has stated through the replying affidavit of **No. 58062 Cpl. Paul Chebet** and the oral submissions of **Ms. Maari**, the learned prosecution counsel, that grounds upon which the court rejected bail initially have not changed: that the applicant may still interfere with prosecution witnesses. It has urged the court to dismiss the medical ground as an afterthought.

I have considered the application. It is trite law that an accused can seek bail at any time. In the present application, the applicant has not sought to have the court review its earlier finding. She has simply asked the court to consider her urgent medical need. The prosecution has on the other hand asked the court to dismiss this ground as an afterthought. In doing so however, the prosecution has not challenged the authenticity of the claim. It has not presented material before the court to demonstrate that the applicant was not actually that ill or that the medical records presented were not genuine. In my view, the prosecution has failed to challenge the new ground upon which the application is premised.

On the issue of interference with witnesses, I hold the view that the same remains of concern to the court. I observe however that the applicant has deposed on oath in her supporting affidavit that she will in no manner whatsoever interfere with the witnesses. I will give her the benefit of the doubt. On the issue of the high tension in the home suggested by both the investigating officer and the probation officer's report, I take the view that there has been effluxion of time which must have mitigated the emotive feelings arising out of the death of the deceased. I must however hasten to remind the parties concerned of their civic duty to remain within the law.

I allow the application on the following conditions:-

- i. Pay cash bail of One Million Shillings (Kshs.1Million) with one surety of KShs.1Million Shillings or on the alternative execute a personal bond of Kshs.1 million with two sureties of KShs.1 million each to be approved by the Deputy Registrar of the court.
- ii. Shall deposit her passport with the court.
- iii. Not leave the jurisdiction of this court without an order of the court.
- iv. Report to the Investigating Officer at Starehe Police Station once every two weeks until further orders of the court.
- v. Not communicate with or in any manner whatsoever interfere with any of the prosecution witnesses nor breach the peace in any manner whatsoever.
- vi. Attend court (before the Deputy Registrar) for the mention of this case once every month. The first such mention shall be on 13th November, 2014.

Ruling delivered and dated at Nairobi this 13th day of October, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For Accused/Applicant

.....: For the State