

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.74 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

HANNAH MUHITO NJOROGE.....ACCUSED

RULING

The Accused, Hannah Muhito Njoroge is charged with **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. She pleaded not guilty to the charge. She has made an application pursuant to **Article 49(1)(h)** of the **Constitution** to be released on bail pending trial. She told the court that it was her constitutional right to be released on bail pending trial unless there were compelling reasons. She stated that the material witnesses had already testified, and therefore, it was unlikely that she would interfere with the remaining witnesses. She stated that she was willing to abide by any terms that the court may impose to secure her attendance in court. Ms. Magoma for the State opposed the application. She stated that one of the witnesses, a son of the Accused, is yet to testify and therefore the chances that the Accused may interfere with him was high. She further stated that the Accused may likely be harmed if she is released to reside in the community where the offence was committed. She was of the view that since the Accused was arrested six (6) months after the offence was committed, it was likely that she would abscond from court if she is released on bail before trial. She therefore urged the court to dismiss the application.

At the hearing of the appeal, this court heard oral rival submission made by Mr. Saenye for the Accused and by Ms. Magoma for the State. Learned counsel essentially reiterated the contents of the application and the supporting affidavits. **Article 49(1)(h)** of the **Constitution** grants any person charged with a criminal offence the right to be released on bail pending trial unless there are compelling reasons to make the court reach a contrary finding. What constitutes “**compelling reasons**” has not been defined by the **Constitution**. However, from several decisions that have been rendered by the various courts since the promulgation of the **Constitution**, compelling reasons include: the likelihood that the Accused will fail to attend court during trial, the possibility that the Accused may interfere with witnesses, if the life of the Accused person or any of the witnesses shall be endangered in case the Accused is released on bail, and where it is alleged that the Accused person may likely commit an offence if he is released on bail. These reasons are not exhaustive. However, the court will consider the circumstances of each case, and the interest of justice, taking into consideration that an Accused person is presumed innocent until he is proved guilty by lawfully established court.

In the present application, the probation office conducted a pre-bail report. The report seems to suggest that the children of the deceased were not willing to give a favourable testimonial in favour of their mother. Taking into consideration that the deceased was their father, the reaction of the children is not wholly unexpected. However, this court is of the view that the fact that the Accused is not liked by his children is not a compelling reason to deny her bail. From the evidence so far adduced by the prosecution witnesses, it is clear that the prosecution will substantially be relying on circumstantial evidence to prove its case against the Accused. All the material witnesses have already testified. The fears expressed by the prosecution that the Accused may interfere with the one witness whom she is closely related to is not supported by any evidence pro-offered by the prosecution. The mere fact that the Accused was arrested and charged six (6) months after the alleged commission of the offence is not sufficient compelling reason for this court to deny the Accused bail. The prosecution was required to give further information

regarding whether the Accused ran away from the long arm of the law after allegedly committing the offence. That is not what is being said here.

In the premises therefore, this court holds that the Accused established a case for this court to release her on bail pending the remainder of the trial. She is so released on condition that she posts a bond of Kshs.1 million with one surety of the same amount. The Accused shall be required to attend court for the remainder of the trial without fail. It is so ordered.

DATED AT NAIROBI THIS 2ND DAY OF DECEMBER 2014.

L. KIMARU

JUDGE