



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 35 OF 2012

REPUBLIC PROSECUTOR/RESPONDENT

VERSUS

FLORENCE KETER ACCUSED/APPLICANT

RULING ON BOND APPLICATION

By Notice of Motion dated 25th April, 2013, the accused prays that she be released on bond/bail on such reasonable conditions as court may deem fit pending the hearing and determination of the trial. The application is based on the following grounds:-

- (a) That the Applicant was on 30th April, 2013 arrested for the charge of murder and arraigned in Court on 14th May, 2012.**
- (b) That the offence of murder is bailable under the Constitution of Kenya.**
- (c) That the Applicant has a qualified Constitutional right to be released on bond or bail on reasonable conditions.**
- (d) That the Applicant had unqualified Constitutional right to be presumed innocent until the contrary is proved.**
- (e) That the Applicant will avail herself and attend the trial until its conclusion.**
- (f) That the Applicant's family resides in Kenya and there is no intention of relocating from the country.**

It is further supported by the affidavit of one David Cheruiyot Langat who is the father of the Applicant sworn on 20th April, 2013.

The gist of the supporting affidavit is that the Applicant is entitled, to under the Constitution to bail that she is presumed innocent until proven guilty and that she is not a flight risk.

The application is opposed vide a Replying Affidavit sworn by Corporal Arthur Mbeja, the investigating officer attached to Plateau Police Patrol Base. He depones that the land where the accused and the deceased (the two being a husband and wife respectively) lived was sold by

relatives of the deceased, hence it would be difficult to trace the accused if she is released on bond; that both the family of the deceased and of the accused live in Kericho and given this close proximity, there is likely to be tension between the families; that given the severity of the sentence in the event of a conviction the accused is likely to flee upon being granted bail; that the accused disclosed to two of the prosecution witnesses, namely John Kosgei and Loisi Cheptoo that she would kill her two children and then herself, hence the need to secure her safety and that even if the offence is bailable, circumstances are that it would not be prudent to grant the bail.

The application was canvassed before me on 22nd April, 2011. In response to the contents of the Replying Affidavit Mr. Marobi for the Applicant stated that the offence was committed in Kaptagat and the accused is willing to relocate to Kericho where her father lives. He submitted that the accused is only a suspect and evidence is yet to be adduced in prove of the charges facing her.

In response, Miss Ruto the prosecuting counsel submitted that the two families, that is, of the deceased and of the accused come from Kericho and the release of the accused is likely to heighten the tension between them. She said that the accused, after killing the deceased swore to kill herself and two children and so it would be unsafe to release on bail.

I have now carefully considered the application and submissions made by the respective counsel on record together with the case law referred to by counsel for the Applicant, and I take the following view.

I agree with defence counsel that no sufficient evidence has been provided by the prosecution to prove that there exists tension between the family of the deceased and that of the accused. I say so because, at the time the offence was committed the deceased and the accused lived in Kaptagat, where the offence was also committed. Further it is the father of the accused who has offered to take in the accused and live with her if she is granted bail.

Moreso, the Replying Affidavit is self-conflicting in this regard. This is because, the deponent first states that the deceased's land on which his family lived was sold and no one knows where it relocated in Kericho. Second, it is in the same affidavit, that the deponent states the two families are living close to each other in Kericho. This implies that the investigating officer is aware both of the loyality of the accused's father and the deceased's family, and therefore, in my view, it would be easy to locate her (accused) if she is granted bail. I do not therefore find the accused a flight risk.

My greatest concern is the threat she (accused) has issued to take away her own life and that of the children. It is disclosed in the Replying Affidavit that she indeed expressed this intention to two of the prosecution witnesses, namely Loise Cheptoo and John Kosgei.

Between the two witnesses, only one had so far testified namely John Kosgei who was PW1. His evidence in chief vindicates the prosecution's sentiments. He clearly testified she the accused had sworn to take away her life and that of her two children. No questions was put to the witness by the defence on cross-examination to rebut this statement. Again the defence in this application has remained mum on this issue.

While the accused remains innocent until she is proven guilty, such a statement cannot be taken lightly. It is not lost in this court's mind that scenarios are a real occurrence in cases of domestic violence. The evidence that was adduced by the four prosecution witnesses clearly demonstrates that prior to his death, the deceased and the accused were such bitter domestic rivals. It is only therefore prudent to keep away the accused at least for now, from the view of the children until such a time the court is convinced they are safe from a likely revenge from the accused.

It is only for this reason, the security of the children, that I would find compelling not to warrant the accused to be granted bail.

I do accordingly dismiss the application.

DATED and DELIVERED at ELDORET this 10th day of July , 2013.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:

..... **for the Applicant/Accused**

..... **for the Respondent/State**