



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 9 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

ZAKARIA MOHAMED DEKOW.....1ST ACCUSED

ABDIAZIZ YUSSUF HASSAN.....2ND ACCUSED

RULING

1. The 2 accused persons are charged with offence of murder contrary to Section 203 as read with Section 204 Penal Code Cap. 63 Laws of Kenya.
2. Particulars being that on 13/7/019 at Bulla Iskediq in Garissa Township within Garissa County murdered Kenneth Kibara James.
3. After taking plea on 17/9/019 their advocate Mr. Nyipolo applied under Article 49 of the Constitution of Kenya for their release on bail/bond pending trial.
4. The same application was opposed by the prosecution.
5. Thus, the court entertained the submissions by both sides. Meanwhile the court had received Pre-bond/Bail Report (PBR) on 2 accused persons from the Probation Officer.
6. The Investigation Officer was also to put an affidavit on the situation on the ground but he told court that after seeing the PBR report by Probation Officer, he concurred with its content thus didn't file an affidavit.
7. The defence contention is that the 2 accused persons are minors aged 15 and 17 years respectively vide their birth certificates shown to court which indicated that 1st accused was born on 1/1/04 and the 2nd accused was born in 2002. Thus, the provision of Article 53 Constitution of Kenya and Section 4 of Children's Act on best interest of the child comes into play. These are to the effect that the child ought not to be subjected to custodial incarceration.
8. The prosecution opposes the application on the grounds that there are compelling reasons/grounds for denial of bail pending trial. The first ground is that the accused persons are above 18 vide age assessment reports made by the doctor. Further accused persons are already in custody by virtue of a charge of robbery under Section 296 (2) Penal Code Cap. 63 Laws of Kenya.
9. They admitted in court that they have not been released on bond on the robbery charge above in the Chief Magistrate Court.
10. The 2nd accused was also facing charge of causing disturbances.
11. The PBR in court shows that accused No. 2 is facing ongoing robbery case No. 573/019 in Garissa Chief Magistrate's Court. He also faced Criminal Case No. 367/018 of creating disturbances and was placed on Community Service Order on 25/5/018.
12. That boda boda riders are prepared to avenge for deceased's death. The parents of the deceased also fear that the accused person may run away to evade justice and also interfere with witnesses. His family is not ready to bail him out. The PBR concludes that there is no guarantee to his safety thus he is not fit for release on bond.
13. As for accused No. 1, he faces above robbery charge, Criminal Case No. 573/019 in Garissa Chief Magistrate's Court. He faces same threat as obtains to the 2nd accused. He is in custody also courtesy of the robbery charge above.

14. The PBR also indicates that Accused No. 1 is not fit for release on bond at this stage.

15. After listening to the parties rivaling submissions and perusal of the PBR's report and taking to account that the accused are still held in custody courtesy of the robbery charges, I find it fit to defer the granting of the bail at this stage.

16. The accused will be at liberty to seek release on bond once they manage to secure bond/bail in robbery case now ongoing.

17. Thus, the court declines from making a comprehensive ruling on the bond issue as stated above.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 24TH DAY OF SEPTEMBER 2019.

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C. KARIUKI

JUDGE