



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL CASE NO 45 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

TONY ODINGA MADARA.....ACCUSED

R U L I N G

1. The accused, Tony Odinga Madara is charged with murder contrary to section 203 as read with Section 204 of the Penal Code, the particulars being that on the 27th day of October, 2017 at Emanuria village, Ikomero sub-location, Eshrombe Location in Khwisero Sub-County within Kakamega County murdered ELDAH OYIERA OBULINJI. He has denied committing the offence and is awaiting trial.

2. Meantime, the accused, through his counsel Mr. Aburili prays that he be released on bond, as provided under Article 49(1)(h) of the Constitution, 2010. According to the foresaid provisions, the accused is entitled to bond on reasonable bond terms unless the prosecution can show compelling reasons why bond should not be granted

3. On the day the application for bond was made, prosecution counsel while not explicitly objecting to the same asked that court be supplied with pre-bail report before granting the bond.

4. The pre-bail report dated 18th May, 2018 has now been provided. From that report, the accused is said to be 36 years old and is the oldest of his four siblings. He completed form four at Xavier Secondary School in Nairobi and has never had any formal employment. He does manual jobs in the locality for a living though he has no wife at the moment he is the father of one child. He is said to have separated with his wife JOYCE NJOKI.

5. From the report, it is also established as follows;- the deceased was paternal grandmother of the accused. The Accused's family is monogamous. Though the accused abuses alcohol, (local brews) and smokes cigarettes, he had never been in conflict with the law before. The accused has close community and family ties. Both the deceased's family and the community at large have no problem with accused being released on bond.

6. Taking all the above into account, I am satisfied that there are no compelling reasons why accused may not be released on bond. The only issue of concern to the court is, and as indicated in the report, the accused's inability to control his drinking habit. Infact from the record, the accused allegedly committed the offence while under influence of alcohol. There is therefore a need for the accused to be assisted to deal with his drinking problem.

7. Having found that there are no compelling reasons why accused may not be released on bond, I allow the application and make the following specific orders:-

1. Accused may be released on his own bond of Ksh six hundred thousand (ksh.600,000/=) plus two (2) sureties of a like amount.
2. The sureties shall be approved by the DR of this honourable court.
3. Once released on bond, accused shall abide by all the bond terms failing which the bond shall be cancelled.
4. The probation officer shall furnish another P.O.R in December more specifically on 5th December 2018 for the purpose of confirming to the court how the accused is coping with his drinking problem.
5. Case fixed for hearing on 05.12.2018

6. Mention on 17.09.2018

7. Until he is released on bond the accused shall remain in custody.

Orders accordingly

RUTH N. SITATI

22.05.2018

In the presences of:-

.Miss Tarusfor state

Mr. Munyembo for Aburilifor accused

Erick Zalo.....court Assistant