



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL DIVISION
CRIMINAL CASE NO. 24 OF 2017

REPUBLIC.....RESPONDENT

VERSUS

AMOS OKOTH.....ACCUSED

RULING

1. The accused **AMOS OKOTH** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on the night of 25th/26th December, 2015 along Catherine Ndereba Road, Kobil Area in Embakasi, within Nairobi County murdered **PAUL KIPNG'ENO BETT**.

2 He pleaded not guilty to the said charges and in compliance with the provisions of Article 49(1) (h) of the Constitution of Kenya 2010 the prosecution was asked whether they had any compelling reason as to why the accused should not be released on bond to which Mr. Meroka the Learned State Counsel indicated that they did not have any compelling reason.

3. There being no compelling reason advanced and in compliance with the provisions of Victim Protection Act and the Bond and Bail Policy Guidelines the court requested for pre-bail report which has now been filed and in which the following observations were made:-

- i. The accused at the time of the alleged commission of the offence herein was a police officer with the Kenya Police Service and is married with three children aged 9, 6 and 3 years respectively.
- ii. There is no likelihood of the accused absconding or interfering with the witnesses as he has a strong family support that will ensure his attendance to court
- iii. Efforts to reach the wife or relatives of the deceased for victim impact statement were futile as the only contact person was unwilling to share their details.

4. Bond is now a constitutional right of every accused person under Article 49(1)(h) which can only be denied if there are compelling reasons advanced by the prosecution and in this matter the prosecution has not advanced any compelling reason to enable the court deny the accused person the enjoyment of his constitutional right. The pre-bail report thereon is also in favour of the accused being released on bond noting that the primary consideration for the court is whether the accused shall attend his trial which had been confirmed in the pre-bail report.

5. The issue therefore for determination by the court is what would constitute reasonable bail terms in respect of this specific case. Whereas both the Constitution and the Bail and Bond Policy Guidelines do not define what constitute reasonable bond/bail terms the bail amount should not be too low so that the accused is enticed into forfeiting the bail amount and fleeing while at the same time taking into account the fact that bail is not meant as a punishment while taking into account the nature of the offence and the circumstances under which it was committed while being alive to the fact that the applicant is presumed to be innocent at this stage of the proceedings.

6. In this present case the accused has been charged with the offence of murder allegedly while on duty and being a police officer there is real likelihood that the release of the same on bond might be looked at negatively by members of the general public, I however would refer to the expression by Justice H.A. Omondi in **REPUBLIC v JOSEPH LENTRIX WASWA Bungoma Cr. Case No. 24/2014** as follows:-

“a) The Constitution of Kenya has now opened a new chapter for any individual who come into conflict with the law – unlike pre-2010 now all offences areailable unless there are compelling reasons.

b) Consideration of bail should not be used as some form of punishment on the accused person or as a way of appeasing the injured party.”

7. With that in mind and taking into account the fact that a citizen of the Republic of Kenya lost his right to life as provided for under Article 26(1) I hold that the following bond terms and conditions are reasonable enough for the release of the accused person:-

a) Bond of Kenya shilling two million (Kshs.2,000,000) with one surety of similar amount.

b) In the alternative bond of Kenya shillings one million (Kshs.1,000,000) with two sureties of similar amount.

c) During the period of his trial the accused shall not make any contact with any of the intended prosecution witnesses in whatever form.

d) The accused shall not visit Embakasi Police Station where he was stationed during the period of his trial without the written authority of the investigation officer herein and shall report to the said Investigation Officer once after every 30 days until the final determination of this case.

DATED, DELIVERED and SIGNED at Nairobi this 24th day of July, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mr. Ariwo for the accused

Accused present

Tabitha court clerk