



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

HIGH COURT CRIMINAL CASE NO.46 OF 2015

REPUBLIC.....STATE

-VERSUS-

TINGA MOTURI OSUMO.....ACCUSED

RULING

On the 1st day of February, 2015 Mr. Kaburi applied for bond for the accused person. The court called for a bail - assessment report to shade some light on the issue of bond in respect of the accused person.

The said report was filed on 2nd March, 2016.

The accused is married and is also a peasant farmer.

The victim attitudes: They are bitter for the loss but also express fears of an attack from the accused if he is released. They suggest that the accused should undergo full trial while in custody until the case reaches its logical conclusion.

Family attitude: The sister expressed acceptance and willingness to assist in soliciting for surety for bond. However, the wife expressed unwillingness to release him for fear of domestic violence she had suffered and which would persist if he is released.

The Community Attitude: they expressed unwillingness to have him return to the community as he participated in criminal groups harassing the community. They strongly expressed that he undergoes trial while in custody until the case reaches its conclusion. They consider him a threat to peace. The area chief also objected to his release. That he used to be the member of community policing but used it for anti-social activities and robbery and murder.

Conclusions :The community considers him a threat to peace. He is therefore considered unsuitable for bond at the moment and thus recommend that he undergoes trial while in custody for the sake of his own security and that of the community.

Bond is constitutional right as per article 49(i) (h), but it is not absolute, if there are compelling reasons, the same is denied.

In **Republic .vs. Lucy Njeri Waweru and 3 others, Criminal case No.6 of 2013, at High Court, Nairobi, Justice F.N. Muchemi** held that in considering whether the court would grant bail, the established principles applicable were the following:

- (a) Whether the accused person were likely to turn up for trial should he be granted bail,**
- (b) Whether the accused persons were likely to interfere with witnesses,**
- (c) The nature of the charge,**
- (d) The security of the accused if released on bond,**
- (e) The severity of the sentence**
- (f) In case of illness of the accused persons, the nature and severity of the illness and**
- (g) Whether the accused persons had fixed abode with the jurisdiction of the court.**

In conclusion the court held that the prosecution established that the four accused persons were likely to interfere, influence and intimidate the key witness and were also at risk of harm from close family members of the deceased if bail were granted.

The application for bond was thus dismissed.

Findings and Determination

This court is of the view that because of the bitterness expressed by the victim family, by the wife and the community as a whole, through the chief, the accused person is not suitable for bond even for his own safety and security.

Accordingly, the application for bond be and is hereby dismissed.

Dated at Nyamira this 17th day of March, 2016.

C.B. NAGILLAH

JUDGE

In the presence of:

Kaburi for the accused person

Malesi for the respondent

Mercy - Court Clerk