



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 96 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES SURVEY MANINI.....1ST ACCUSED

RICHARD OMBUI MANINI.....2ND ACCUSED

GILBERT MAKORI MINYONGA.....3RD ACCUSED

JOSEPH MANDEL MANINI.....4TH ACCUSED

SAMUEL KAMWANA MORENA.....5TH ACCUSED

RULING

1. The 5 accused persons herein are jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. It is alleged that on 17th April, 2014 at Bogita Sub-location in Kisii South District within Kisii County, jointly with another not before the court, murdered **DENNIS OBWOGA KEREMA**.
2. Plea was taken on 20th January, 2016 wherein all the accused persons pleaded not guilty to the said charge of murder and are now awaiting their trial.
3. Prior to the taking of the plea, the 1st and 2nd accused had earlier on taken plea in this case for the same charge on 2nd October, 2014 after which they were released on bond pending their trial.
4. The 3rd, 4th and 5th Accused were however later on 18th May, 2015 arraigned in court for the same offence in another case being Kisii HCCRC No. 26 of 2015 which was subsequently consolidated with this case on 20th January 2016, thereby necessitating the taking of fresh pleas.
5. Soon after the taking of the fresh pleas, Mr. Ondari advocate for the accused persons applied that the 1st and 2nd accused remain out on the same bond terms that they were earlier granted on 22nd May, 2015. Mr. Ondari at the same time applied for the release of the 3rd, 4th and 5th accused on bond pending their trial. It is this application for bond in respect to the 3rd, 4th and 5th accused that has necessitated this ruling because the said application was vehemently opposed by the state through Mr. Otieno the prosecution counsel who submitted that the 3rd, 4th and 5th accused persons were flight risks and had threatened the potential witnesses to the case at hand.
6. The state subsequently filed a replying affidavit sworn by the **Investigating Officer No. 11058 PC FRED OKOTH** on 26th January, 2016 in which he objected to the release of the 3rd, 4th and 5th accused on bond citing threats that were being issued to the witnesses in the case not to testify. The Investigating Officer further depones that the threat to the lives of the witnesses is real and

- that indeed, one of the key witnesses one Samuel Kerema had been killed under unclear circumstances suspected to be related to the earlier threats to his life.
7. P.C. OKOTH contends that the death of one of the witnesses has sent a chilling message to the rest of the witnesses who are now living in constant fear for their lives some of whom have fled the area.
 8. The Investigating Officer has further stated that the 3rd, 4th and 5th accused are a flight risk having gone into hiding soon after the offence was committed only to be arrested on 15th May, 2015, exactly one year after the murder in question is alleged to have been committed.
 9. The Investigating Officer has in his said replying affidavit expressed fear that the 4th, 3rd and 5th accused might if granted bond be tempted to abscond from court and go into hiding once again considering the gravity of the offence which they now face. Mr. Ondari for the accused sought and was granted time to file an affidavit in response to the Investigating Officer, however, on 11th May, 2016 when the case came up before me for mention, Mr. Ondari intimated to the court that he did not wish to file any affidavit thereby leading to the court setting down the matter for ruling on the bond application, the absence of a response by the defence notwithstanding.
 10. I have anxiously considered this application for bond in respect to the 3rd, 4th and 5th accused persons herein bearing in mind that their co-accused, 1st and 2nd accused are already out on bond.
 11. The Investigating Officer has in his sworn affidavit made very serious averments on the reasons why the 3 accused persons should not be granted to bond. It is not lost to me that accused 3, 4 and 5 were first arraigned in court on 18th May, 2015, one year after the offence in question was alleged to have been committed. Under the above circumstances, the prosecutions claim that the 3rd, 4th and 5th accused went into hiding soon after the offence was alleged to have been committed cannot be overlooked.
 12. Further, the claim by the state, that one of the key witnesses has been killed under unclear circumstances suspected to be linked to the threats made to the witnesses is a very serious claim that this court cannot take lightly.
 13. Even though bond is a constitutional right of every accused person, I am satisfied that in this instant case the prosecution has spelt out compelling reasons why bond should not be granted.
 14. This court further takes note of the fact that it had, on 30th October, 2015 prior to the consolidation of the instant case with the Kisii HCCR case No. 26 of 2015 in which the 3rd, 4th and 5th accused were previously charged, denied the accused persons bond for the very same reasons that have now been advanced by the state after the consolidation of the two files.
 15. That being the case, this court declines to grant the 3rd, 4th and 5th accused renewed application for bond as to do so would be tantamount to this court sitting on appeal in its own ruling of 30th October 2015 over the same subject.
 16. The accused persons are at liberty to renew the application for bond at a later date should the circumstances change.

Delivered, dated and signed in at Kisii on 25th day of May, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Bigogo for the Accused
- Omwoyo court clerk

