



REPUBLIC OF KENYA
THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 3 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JOHNSTONE AYORO ONDEGO.....ACCUSED

RULING

By a Notice of Motion dated 12th February 2015, pursuant to the provision of **Section 124** of the **Criminal Procedure Code [Cap 75]** Laws of Kenya, **Article 49 (1) (h)** of the constitution and all the enabling provisions of the law, the applicant seeks orders:-

1. **THAT** this Application be certified as urgent and service be dispensed with in the first instance;
2. **THAT** the Applicant herein be granted bail/bond pending the hearing and final determination of the case;
3. **THAT** this Honourable court does make any other order(s) it deems fit in the circumstances.

The Application is based on the grounds *inter-alia*:-

1. The applicant was arrested and charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code [Cap 63]** of the Laws of Kenya.
2. The Applicant took plea on 19th January 2015 and denied having committed the offence.
3. The Honourable court ordered that the Applicant should be remanded at the Industrial Area Remand and the hearing of the case do proceed on 19th October, 2015.
4. The Applicant has a Constitutional rights to be released on bond or bail on reasonable conditions pending the hearing of this case.
5. It is in the interest of justice to grant the orders sought.

The application is supported by the annexed affidavit of **Johnstone Ayoro Ondego** sworn on the 12th day of February 2015.

On behalf of the applicant, it was urged that the hearing is scheduled for 19th October 2015.

That by virtue of **Article 49 (1) (h)** the applicant has a constitutional right to be released on reasonable bond or bail terms pending the hearing of the case.

That the applicant is a Kenyan citizen who has all long been resident in Kenya and hence not a flight risk.

On behalf of the respondent it was urged that the evidence against the applicant is overwhelming and credible. That there is a real possibility of a conviction hence the chances of absconding are high.

That the accused person is conversant with the prosecution witnesses and also know where they reside. Hence there is real possibility that if released on bond/bail the accused will inflict real fear on the witnesses who may not turn up during the hearing.

That given the nature of the offence – murder – and the severity of the sentence, if found guilty, the temptation of the accused to abscond if released on bail pending the conviction of the trial, is real.

I have agonized over the rival arguments. Having done so I feel duty bound to reiterate the principles, which a court of law ought to rely on in granting or refusing bail/bond.

The primary object of remanding an accused person is to ensure that he or she will appear to stand his trial and not to seek to evade justice by leaving the jurisdiction of the court. In this regard, I call in aid the persuasive authority of *JAFFER -VS- REPUBLIC [1973] EA 39*.

Then there are minor considerations to be taken into account e.g.:-

- i. the nature and severance of the offence;
- ii. the severity of the punishment involved;
- iii. the strength of the evidence in support of the charges;
- iv. whether there exists compelling reasons for refusing bond or bail.

Applying the above principles to the peculiar circumstances of this case, there is evidence by way of a replying affidavit of the investigating officer that accused has been supplied with witnesses statements and is now aware of the identity of the witnesses and their respective places of abode. That being the case there is real possibility that the accused person, if released on bail, would inflict fear on the prospective witnesses by intimidation.

In the result, I am disinclined to grant bail/bond to the applicant at this stage until the eye-witnesses have given evidence.

The Applicant is at liberty to renew her application once the eye-witness have given evidence. It is so ordered.

Dated and delivered at Nairobi this 18th day of November 2015

N. R. O. OMBIJA

JUDGE