



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.47 OF 2015

REPUBLIC - PROSECUTOR

VERSUS

MARY JOHN NYANCHAMA - ACCUSED

RULING

1. The accused person herein, **MARY JOHN NYANCHAMA**, is charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204 of the Penal Code**.

The particulars of the offence are that on 7th August 2015, at Mwamanwa Sub-location in Kisii Central District within Kisii County in the Republic of Kenya, murdered **ROSEMARY MARIA ORANGO**.

2. On 22nd September 2015, the accused pleaded “**NOT GUILTY**” to the said charge of murder whereupon her advocate on record Mr. Sagwe applied for her release on bond pending her trial.

Mr. Otieno for the State sought time to enable him respond to the application for bond and further applied to court to call for a pre-bail assessment report from the Probation Officer before considering and determining the accused’s said bond application.

4. As at 21st October 2015, when the case came up for mention, the State had not filed any affidavit in reply to the accused’s application for bond and Miss. Boyon, then appearing for the State opted to leave the issue of bond to the discretion of the court.

5. The pre-bail assessment report filed by the Probation Officer on 16th October 2015 did not favour the release of the accused on bond on the grounds that her life could be in danger in view of the fact that members of the deceased’s family who hail from a neighbouring village were still bitter with her and due to the said hostility from the neighbours, the deceased’s husband was also hesitant to have her back to his home with the net effect that the accused would have no fixed abode if released on bail.

6. From the Probation Officer’s report, it is clearly evident that even though the accused’s immediate family members are willing to have her back in their midst, the surrounding community is still hostile and might harm her if she is released on bond.

7. Due to the fact that the life of the accused person may be in danger if she is released on bond, the Probation Officer strongly recommended that she should not be released on bond at the moment as tension was still high on the ground.

8. This court is alive to the fact that the rights of an accused person to be released on bond are enshrined

in the **Constitution at Article (49) (1) (h)**. The right to bond under that article is however qualified and not absolute as the sub-article states:

“49(1) (h) an arrested person has the right – to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

9. In this instant case, I find that there are compelling reasons that militate against the release of the accused person on bond. The Probation Officer is categorical, in her pre-bail assessment report, that the accused person’s life could be in danger if she is released at this point in time due to the bitterness and hostility from the deceased’s community.

10. The court notes that the offence in question is reported and alleged to have taken place on 7th August 2015 barely two months from the date the application for bond was made.

11. Clearly, the emotions and tension on the ground where the incident took place is still high. Under those circumstances, it would be unwise to grant the accused bond as her release may lead to harm or revenge being meted on her. I find that the accused would be better off in custody for her own safety.

12. In the end, the application for bond is rejected and dismissed for now but with a rider that the accused may renew her bond application in future when the tension on the ground subsides.

13. Mention on **15th December 2015**.

14. It is so ordered.

Dated, signed and delivered in open court this 17th day of November, 2015

HON. W. OKWANY

JUDGE

In the presence of:

- Mr. Mbelele for the State
- N/A for advocate for the Accused
- Mr. Ogega: court clerk