

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.14 OF 2013

REPUBLIC PROSECUTOR

VERSUS

DAVID KIPYEGON RONO ACCUSED

RULING

1. The accused person herein, David Kipyegon Rono, has applied to this court for orders for his release on bail or bond pending the hearing and determination of his case. He is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars being that on the 9th February 2013 at Njipship Trading Centre in Ololmasan Location of Pirrar Division within Transmara East District of Narok County in the Republic of Kenya, he murdered Evans Ngui Munyao. The accused has pleaded not guilty and is awaiting trial.
2. The application for bond which is mounted pursuant to the provisions of **Article 49 (I) (h)** of the **Constitution** is opposed vide the Replying Affidavit sworn on 5th April 2013 by No.233055 Inspector of Police Sebastian Kaunga of Kilgoris police station and the investigating officer in this case. He depones that the applicant is a flight risk because of the proximity of his home to the Kenya-Tanzania border, and that it would therefore be dangerous for the court to grant the applicant bond.
3. **Article 49 (I) (h)** of the **Constitution** provides that every arrested person has the right to be released on bond or bail unless there are compelling reasons to warrant refusal of an order to that effect. In determining whether or not to grant bond to the accused, this court must consider whether or not the accused will avail himself at court during the pendency of this case against him. Other factors to be considered by the court are whether, if released on bond, the accused is likely to interfere with witnesses through intimidation or other methods; or whether by releasing the accused on bond, societal peace and security will be compromised.
4. To assist the court in deciding this application, the court called for and obtained a Bail Assessment Report, but the report seems to contain information on two or three different persons and not the accused herein. This Bail Assessment Report, which is dated 14th January 2014 does not assist the cause of the accused.
5. The court has however carefully considered the constitutional provisions and the Replying Affidavit in opposition to the application for bond. As pointed out earlier, the most important factor to be taken into account by the court is whether the accused will turn up whenever he is required by the court. In my considered view, it is unlikely that the accused person herein will turn up for the hearing of his case if he is released on bond. Thus, the possibility of the accused not turning up for his case is a compelling reason why he should not be released on bond.
6. Accordingly, and for the reason above stated, the application for bond be and is hereby dismissed. The accused shall continue to conduct his case from prison remand.
7. Orders accordingly.

Dated and delivered at Kisii this 23rd day of January, 2014

R.N. SITATI

JUDGE.

In the presence of:

Miss Cheruiyot for State/Respondent

Mr. Okemwa for Accused/Applicant

Mr. Bibu - Court Clerk