



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.13 OF 2013

REPUBLIC PROSECUTOR

VERSUS

DENNIS OSIEMO BORURA ACCUSED

RULING

1. The accused person herein, Dennis Osiemo Borura is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars being that on 8th day of February 2013 at Getare village, Onywere sub location in Marani District within Kisii County, he murdered James Osiemo Borura. The accused has pleaded not guilty and is awaiting trial.
2. Meantime, the accused seeks to be released on bond pending trial. He makes this application pursuant to **Article 49 (I) (h)** of the **Constitution** which provides that every arrested person has a right to be released on bail or bond pending trial unless there are compelling reasons why such a person cannot be released on bond.
3. The state filed an affidavit sworn by No.56600 Cpl Hellen Bii of Rioma police station. Cpl. Bii states that she is one of the investigating officers in the case, and that she does not have any compelling reasons to have the accused person denied bail. The deponent however avers that the discretion to grant or refuse bail/bond is that of the court.
4. It is to be noted that prior to the promulgation of the Constitution of Kenya 2010, persons charged with offences attracting a death penalty on conviction were not entitled to bail/bond. The new Constitution thus breathed a breath of fresh air into the hopes of persons such as the accused person herein. Secondly, if there are no compelling reasons to deny the accused bond, then the court would ordinarily exercise its discretion in favour of the accused.
5. Considering the circumstances of this case, and bearing in mind the fact that the state has not given any compelling reasons why the accused should be denied bond pending trial, I allow the application upon the following terms:-
 1. *The accused may be released on his own bond of Kshs.3,000,000/= (Three Million only) with two (2) sureties of a like amount.*
 2. *The sureties shall be approved by the Deputy Registrar of this Hon. Court.*
 3. *Once released on bond, the accused shall attend court once every thirty (30) days for mention of his case until the case is heard and determined or until further orders of this honourable court.*
 4. *Mention on 24/02/2014.*
6. Orders accordingly.

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

R.N. SITATI

JUDGE.

In the presence of:

Miss Cheruiyot (present) for State

Mr. Nyagwencha (present) for Accused

Mr. Bibu - Court Clerk