



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.91 OF 2013

REPUBLIC PROSECUTOR

VERSUS

ENOCK APELE AKOKO ACCUSED

RULING

1. What is before me is an application for bail/bond brought pursuant to the provisions of **Article 49 (I) (h)** of the **Constitution** which provides that 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.
2. The accused/applicant 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 the 10th day of September 2011 at Total area in Migori Township in the Republic of Kenya he murdered Faith Akinyi Ayieta. The accused has pleaded not guilty to the charge and is awaiting trial.
3. The burden of demonstrating to the court that there are no compelling reasons to warrant denial of bond to the accused is on the State. In this regard, the state has filed an affidavit sworn by Number 65494 Cpl. Josphat Ongoki of Migori Police Station. The deponent says that he is the investigating officer in this case and at paragraph 3 of his affidavit, he avers that he has no compelling reasons to have the accused denied bail, though he concedes that the final decision to grant or refuse bond or bail rests with the court.
4. To assist the court further in reaching a balanced decision in this matter, the court called for and obtained a Bail Assessment Report dated 16th December 2013. The report reveals that the deceased was wife to the accused; that the accused is remorseful about the death of the deceased and that the accused's relatives are ready and willing to stand surety for him if he is granted bond. It is also indicated in the report that the release of the accused on bond would not compromise either the security of the community or that of the accused himself.
5. I have now carefully considered this application and the only issue for determination is whether, if released on bond, the accused will present himself to court during the pendency of his case. The fact of an accused person appearing in court to conduct his case is the most important of all the parameters to be considered by a court when determining an application for bond. Other factors are whether the accused is likely to interfere with witnesses or whether his release on bond will compromise his own safety or the security of the community as a whole, bearing in mind the additional fact the family of the victim is also crying out for justice.

6. After carefully considering all the above factors, I am of the view that there are no compelling reasons why the accused may not be released on bond. Accordingly, I allow the application on the following conditions:-

1) *The accused may be released on his own bond of Kshs.2, 000,000/= (Shillings Two Million only) with two (2) sureties of a like amount.*

2) *The sureties shall be approved by the Deputy Registrar of this*

honourable court.

3) *Once released, the accused shall appear for the mention of his case every thirty (30) days until the case is heard and determined or until further orders of this court.*

4) *Mention on 24/02/2014.*

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

Mr. Okemwa for Minda for Accused

Mr. Bibu - Court Clerk