



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL MURDER NO.105 OF 2013

REPUBLICPROSECUTOR

VERSUS

PAULINE CHEPKEMOI KOBIRO ACCUSED

RULING

1. The applicant herein, Pauline Chepkemoi Kobiros, is seeking to be released on bond pending her trial for murder. She is accused of committing the offence on the 30th day of September 2013 at Chebungei village, Mogor Location in Transmara East District within Narok County in the Republic of Kenya where she allegedly murdered David Kimeli Mutai. She denied the offence when she appeared before me on 23rd October 2013. Her case is yet to be set down for hearing.
2. The application for bond is anchored in **Article 49 (1) (h)** of the **Constitution** which guarantees an arrested person 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. It is the State to satisfy the court that there exist compelling reasons why the applicant herein may not be released on bond or bail.
3. In this case, the state filed an affidavit on the 31st July 2014, the said affidavit being duly sworn by No.62264 Cpl. Henry Kilonzo of Transmara CID Office who is one of the Investigating Officers in this case. The deponent states as follows at paragraph 3 of the affidavit: **“THAT I do not have any compelling reasons to have the accused persons denied bail which is their right as provided for in the Constitution of Kenya.”** It is to be noted here that there is only one accused person in this case. Thus the State has discharged the duty cast upon it by the Constitution of showing whether or not there are compelling reasons why the accused person may not be released on bond.
4. Pursuant to an order of this Honourable Court dated 23rd October 2013, the court has received a Bail Assessment Report dated 10th July 2014 and filed in court on 16th July 2014. From the report, the following facts emerge:-
 - The applicant is aged 42 years old, widowed and has 2 children and 3 grandchildren.
 - She left school at standard 3.
 - Though said to be hardworking, the applicant takes alcohol.
 - Has good community ties and relates well with them.
 - The deceased was applicant's man friend who hailed from a distant neighbourhood.
 - Home environment is good for applicant's release on bond.
 - Members of the applicant's family are willing to stand surety for her.

5. After carefully analyzing the Bail Assessment Report in light of the fact that the State has no compelling reasons why the accused may not be released on bond, the question that arises for determination is whether I should now exercise my unfettered discretion in favour of the applicant. In my considered view, all the circumstances support the applicant's quest to be released on bond pending trial. The primary consideration by this court in reaching the above conclusion is whether the applicant will turn up for trial of her case as and when required to do so. From the material before me, I am satisfied that the applicant is neither a flight risk nor a threat to the security of her community.

6. In the premises, the bond application is allowed on the following conditions:-

1. *The applicant may be released on her own bond of Kshs.1,000,000/= (Kenya Shillings One Million) with 2 sureties of a like amount; the sureties shall be approved by the DR of this Honourable Court.*
2. *Once released, applicant shall attend court once every 30 days for mention of her case until the case is heard and determined or until further orders of the court; I/d bond shall be canceled immediately and sureties put to account.*
3. *Mention on 05/09/2014 for further orders.*

Delivered, dated and signed in open court at Kisii this 6th day of August, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Mr. Ochieng for State

Mr. Momanyi Aunga for Accused

Mr. Ngetich - Court Assistant