



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL MURDER NO.25 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

PAUL MAKORI NYANDIEKA ACCUSED

RULING

1. On the 18th February 2014, the accused person herein Paul Makori Nyandieka made his first appearance in court. On the 26th February 2014, he denied the charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence against him are that on the 18th day of November 2013 at Kerongorori village in Kenyeny District within Kisii County, in the Republic of Kenya, he murdered Joseph Nyabuto Maseno.
2. As he awaits trial, the accused person prays that he may be released on bond or bail pursuant to the provisions of **Article 49 (1) (h)** of the **Constitution of Kenya, 2010**. Under the said provisions any accused person has a “**right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be so released.**”
3. What is clear from the provisions of **Article 49 (1) (h)** (supra) is that unlike under the old constitutional dispensation where an accused person had to show cause why he should be released on bond, it is now the sole responsibility of the State to show cause why an accused person may not be released on bond or bail.
4. In the instant case, the State did not file any papers in response to the application and during the hearing of the application on 1st May 2014, Mr. Majale prosecution counsel told the court that their office's requests to the OCS, Ogembo police station for a response to the bond application had elicited no response, and that in the circumstances, there were no compelling reasons why the accused person herein may not be released on bond or bail.
5. There is on record a Pre-Bail Report filed in court on 18th June 2014. The Report was filed pursuant to an order of this court made on 26th February 2014. From the report, the following information emerges:-
 - *The accused's parents are both deceased.*
 - *He was born in 1981 and is a standard 8 leaver.*
 - *He has undertaken a course in automobile mechanics and driving.*
 - *Has 2 wives with 4 children. Both wives are housewives.*
 - *Has no known previous criminal antecedents.*
 - *He is recommended for bond on grounds that he has a stable social support system.*
6. In considering an application of this nature, the primary factor to be taken into account is whether the

accused person shall turn up for trial once he is released on bond. This is the position I stated in the case of **Republic -vs- Abel Moranga Nchore – Kisii HCCR Murder No.137 of 2013** (unreported). Whether the accused will turn up for trial is hinged on other factors such as the likelihood of the accused person interfering with witnesses and the risk of the accused absconding. It is the duty of the state to prove to the satisfaction of the court that it would be unsafe to release the accused person on bond or bail.

7. In the instant case, no such reasons have been advanced by the State. This, coupled with the Pre-Bail Report (though the same is an untested document) I have no reason to deny the accused person the order he seeks. Accordingly, the application is hereby allowed on the following terms:-

- 1. The accused may be released on his own bond of Kshs.2,000,000/= (Kenya Shillings Two Million) with 2 sureties of a like amount. The sureties shall be approved by the DR of this Honourable Court.*
- 2. Once he is released on bond, he shall appear before the DR of this Honourable Court for mention of his case once every 30 days until the case is heard and determined or until further orders of this Honourable Court.*
- 3. In default of (2) above, the bond shall be cancelled immediately and the sureties taken to account.*
- 4. Mention on 05/09/2014.*
- 5. Orders accordingly.*

Delivered, dated and signed in at Kisii on 6th day of August, 2014

R.N. SITATI

JUDGE

In the presence of:-

Mr. Ochieng for the State

Mr. Momanyi for Kaburi for Accused

Mr. Bibu - Court Assistant