



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL MURDER NO. 37 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL KENYANYA NYAATA

SWAYA KEBURAGI

EVANS KEBURAGI JAMES.....ACCUSED

ERIC SWANYA KEBURAGI

ISAAC MOSOMI ONSOMBI

GEOFFREY KIBURAGI NYAMBAGI

RULING

1. The 6 applicants, Daniel Kenyanya Nyaata, Swanya Keburagi, Evans Keburagi James, Erick Swanya Keburagi, Isaac Mosomi Onsombi and Geoffrey Keburagi Nyambagi are jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that on the 4th day of March 2014 at 6.00 a.m., at Bonyatach Sub location in Gucha District within Kisii County in the Republic of Kenya, they murdered Bocheri Onsombi. They all denied the offence and are awaiting trial.

2. In the meantime, they seek to be released on bond or bail in accordance with the provisions of **Article 49 (1)** of the **Constitution 2010**, 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.”**

3. The party charged with the responsibility of showing that there are compelling reasons not to release an accused person on bond or bail is the State. Although the constitution does not define what amounts to **“compelling reasons”** it is in no doubt that compelling reasons are such reasons as would make it uncomfortable for the court to release an applicant on bond. In my considered view, a case in which an applicant is unlikely to attend court once released on bond/bail, or a case where the release of an applicant will jeopardize the security of the community or the safety of witnesses are some of the reasons I would consider as compelling to deny an applicant bond/bail.

4. In the instant case, the State has not filed any affidavit to show whether or not there are any compelling

reasons why the accused persons may not be released on bond, although prosecution counsel undertook to do so.

5. In an effort to get a clearer picture of each of the 6 applicants, the court called for and obtained Probation Officer's Reports. The reports were filed in court on 13th June 2014. The 1st accused, who is aged 24 years old is married with 2 children. There are people willing to stand surety for him. The 2nd accused is 74 years old. He is said to be in poor health. He is recommended for bond. The 3rd accused is aged 28 years, and married with children. There are people willing to stand surety for him. The 4th accused is 18 years old and is son of a single mother who is deceased. He has one younger brother and both are in the care of the 2nd accused herein. He is single. There are relatives willing to stand surety for him. The 5th accused is aged 25 years old. He is married with 2 children. He is recommended for bond. The 6th accused is aged 32 years old. He dropped out of school at standard 6. He is married with 4 children. He is recommended for bond.

6. From a reading of the Probation Officer's Reports, the deceased may have died from lynching by members of the public. The applicants are all members of one family or are closely related. They come from humble background.

7. Considering the fact that the state has not put forward any compelling reasons why the applicants or any of them may not be released on bond, and taking into account the contents of the Probation Officer's Reports, I am satisfied that there are no compelling reasons why the applicants may not be released on bond/bail pending trial. I therefore allow the application on the following terms:-

1. Each applicant may be released on bond of Kshs.500,000/= (Kenya Shillings Five Hundred Thousand only) with 2 sureties of a like amount. Such sureties shall be approved by the DR of this Honourable Court.

2. Once released on bond, the applicants shall appear before the DR of this Honourable Court once every 30 days for mention of their case until the case is heard and determined or until further orders of this court.

3. In default of 2 above, the bond shall stand cancelled and the sureties taken to account.

4. Mention on 01/09/2014.

8. Orders accordingly.

Delivered, dated and signed here at Kisii in open court on the 1st day of August, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Mr. Majale (present) for State

Mr. C.A. Okenye h/b for E. Asati for Accused

Mr. Bibu - Court Assistant