



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL MURDER NO.5 OF 2013

REPUBLIC **PROSECUTOR**

VERSUS

ERICK NYAMOSI MOMANYI)

ISACK NYAMOSI OKARI).....ACCUSED

RULING

1. The accused persons herein, Erick Nyamosi Momanyi and Isack Nyamosi Okari, are 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 night of 14th/15th January 2013, at Riakworo village in Masaba North District, within Nyamira County, in the Republic of Kenya, they murdered Alex Mokuia Momanyi. They pleaded not guilty and are awaiting trial.
2. In the meantime, they seek to be released on bond or bail pursuant to the provisions of **Article 49 (1) (h)** of the **Constitution of Kenya, 2010**. Both accused stated in their supporting affidavits that they are sickly.
3. Their application is opposed on the ground that because of the weight of the evidence that is within the possession of the State and in view of the severity of the likely death sentence upon conviction, the applicants are likely to disappear and go into hiding if released on bond/bail pending trial.
4. The court called for Bail assessment Reports on the accused persons. Both reports are dated 19th June 2014 and filed in court on the same date. Regarding the first accused, Erick Nyamosi Momanyi, the Bail Assessment Report contains the following information:-

- *He is aged 34 years old, a standard 7 dropout, Christian and is still single.*
- *Has no previous criminal inclinations, but drinks alcohol.*
- *His family owns a small piece of land (quarter acre) on which the family is settled.*
- *He was working as a casual labourer.*
- *The home and community environment is conducive to the accused being released on bond.*
- *The deceased was a brother.*
- *He is recommended for bond.*

1. As regards Isack Nyamosi Okari, the Bail Assessment Report contains the following information:-

- *He is aged 35 years, a form I dropout, Christian and unmarried.*
- *He is also said to be married with a wife and 5 children and has 10 siblings.*
- *Has no known previous criminal tendencies.*
- *The family owns a small piece of land on which the family is settled.*

- *He used to earn a living from doing casual jobs.*
- *The deceased was a cousin.*
- *The home and community environment is conducive for release on bond.*
- *He dropped out of school due to financial constraints. He consumes alcohol.*

2. Against the backdrop of the aforementioned information, this court is under a duty to consider whether the accused persons will turn up for trial if they are released on bond, for this indeed, is the primary concern of the court. The court has also to consider whether the accused persons are likely to interfere with witnesses if they are released on bond/bail.

3. After carefully considering the relevant parameters for consideration in this matter, I find and hold that there are no compelling reasons why the accused persons may not be released on bond. There is no suggestion that they would be a threat to societal peace if they are released on bond, nor is there any indication that they are likely to interfere with witnesses. Further, the safety of the accused persons is not threatened if they are released on bond.

4. Accordingly, and for the reasons above stated, I allow the application for bond on the following terms:-

1. *Each accused may be released on his own bond of Kshs.1,000,000/= (Kenya Shillings One Million) with 2 sureties of alike amount, the sureties to be approved by the DR of this honourable court.*
2. *Once released, the accused persons 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 immediately.*
4. *Mention on 01/09/2014.*

Orders accordingly.

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

R.N. SITATI

JUDGE.

In the presence of:-

Mr. Majale for State

Mr. C.A. Okenye for Accused

Mr. Bibu - Court Assistant