



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISI
CRIMINAL MURDER NO.123 OF 2013

REPUBLIC..... PROSECUTOR

VERSUS

JARED ONDIMO MANGERA ACCUSED

RULING

1. The accused person herein, Jared Ondimo Mangera is both deaf and dumb. His case is proceeding with the help of a sign language interpreter, M/s Rachel Okoth. The accused is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code, Cap 63 Laws of Kenya**. The particulars are that on the 5th day of November 2013 at Kiongongi village in Nyamira North District, within Nyamira County, he murdered Moses Ombori Onduko. He pleaded not guilty to the charge and is awaiting trial, but before then, he prays that he be released on bond.

2. The application for bond is made pursuant to the provisions of **Article 49 (1) (h)** of the **Constitution, 2010**. Under the said provisions, every arrested person is guaranteed 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 so released. The burden of proof of the existence of compelling reasons is upon the State/Respondent.

3. The application is opposed vide the affidavit dated 13th March 2014 sworn by Number 76478 Cpl Joshua Tobole. The grounds raised in opposition to the application are that:-

- *the situation on the ground is highly volatile;*
- *the accused, if eventually convicted will suffer the death penalty as provided by law;*
- *though the offence of murder is now bailable, the grant of bail is not absolute, but a matter for the discretion of the court.*

4. There is also on record, a Bail Assessment Report dated 16th June 2014 but filed in court on 6th August 2014. From the report, the court notes the following:-

- a. *the deceased was a husband to a woman who had once been married to the accused after the woman had separated from the deceased;*
- b. *when the woman, the cause of the quarrel between the accused and the deceased left, she took off with some of the accused's belongings;*
- c. *On the day of the alleged murder, the accused had found the deceased wearing a T-shirt which the accused recognized to be his (accused's);*
- d. *the accused has been working as a casual labourer;*
- e. *the accused person is highly temperamental but does not abuse any drugs;*
- f. *the father of the deceased is still bitter with what happened to his son;*

- g. the community blames the accused person's high temperament for the alleged offence, but he is said not to be a threat to peace and security of his area;*
- h. there is nobody willing to stand surety for him as both parents are deceased.*

5. While the State is opposed to the accused being released on bond, the Bail Assessment Report indicates otherwise save for the fact that there is nobody who is willing to stand surety for him.

6. In applications of this nature, the paramount consideration to be taken into account by the court is whether the accused will be able to turn up for the hearing or for any connected purpose before the case is heard and determined. It is also important at this stage to note that courts do not make orders in vain. From the Probation Officer's report, it will be futile to grant the bond when there is nobody willing or available to stand surety for the accused person.

7. In the circumstances, and because there is no possibility of the accused person finding a surety, and further, because the accused person comes from a humble background with minimal chances of raising cash bail, I hereby dismiss the accused person's application for bond.

8. Orders accordingly.

Delivered, dated and signed at Kisii this 23rd day of September, 2014

R.N. SITATI

JUDGE

In the presence of:-

Mr. S.M. Sagwe (present) for State

Mr. Otieno for Accused

M/s Racheal Akoth - Court Assistant

Further Order

1. Mention on 17/11/2014 for fixing hearing date.
2. Accused R.I.C.

R.N. SITATI

JUDGE.

23/09/2014