



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 90 OF 2014

REPUBLICPROSECUTOR

VERSUS

KEVIN AMATA OMBOTO.....ACCUSED

RULING

1. This is an oral application by Nyawencha, counsel for the accused, **Kevin Amata Omboto**. This accused is charged with the offence of murder, contrary to S.203 as read with s.204 of the Penal Code. It is alleged that on the night of 23rd and 24th of February, 2013 at Bosinange village south Gucha sub-county within Kisii County, jointly with others before the court murdered **OEKO OYONGO**. He denies the charge. He now asks for bond pending his trial.
2. Under article 49(1)(h) of the Constitution the offence of murder is bailable unless there are compelling reasons not to grant bond.
3. The state is to furnish the court with the response to any application for bond, either asserting that there are compelling reasons or that they do not oppose the application by the accused for bond.
4. In the prosecution's affidavit dated 6th 2014, they state, in para I, that the applicant is a flight risk. That his co-accused were arrested on 26th February, 2013 but he, the applicant, was only arrested on 5th September, 2014, more than a year after the alleged offence was committed. 5. The prosecution further states, in para iii, that since the offence with which he is charged is a serious one, carrying death sentence, it may spur him to abscond.
5. The state further states in para ii, thereof, that the situation on the ground is volatile as the members of the public are baying for his blood in reprisal for the acts committed by the accused and his co-accused.
6. However, there is also filed herein a pre-bail assessment report on the accused. It was filed on 31st October, 2014. The report is favourable to the accused. The father is willing to provide surety for him. His brother is facing similar offence in criminal case No.17 of 2013.
7. The provisions of the constitution are very compelling. Where the decision to grant and not grant bail are balanced, the constitutional provisions will tip the scale in the favour of granting bond subject to the terms of the bond.
8. Accordingly, I allow the application for bond for the accused. He is hereby given a personal bond of kshs. 1,000,000 with two sureties of similar amount, the same to be approved by the Deputy Registrar of this court.
9. Upon his release, the accused will attend court for the mention of his case every month until the hearing and determination of his case or until further orders. The next such attendance to be on 4th January, 2015. Should he default, the bond will be cancelled forthwith and the two sureties will be made to account.
10. It is so ordered.

Dated and delivered at KISII this 8th day of December, 2014

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Omondi holding brief for Soire for accused for the applicant

.....for the respondent

Edwin Mongare Court Clerk.