



REPUBLIC OF KENYA

Cases in Magistrate Courts

Criminal Case 28 of 2013

REPUBLIC.....PROSECUTOR
VERSUS
JOHN OMONDI JUMA.....ACCUSED.

RULING

By an information dated 4.11.209 the accused is charged with Murder C/Sec. 203 as read with S. 204 of the penal code. It is alleged that on the night of 5th and 6th September 2009 at Kolyalo village in Ndhwa District within Nyanza province, jointly with others not before the court murdered George Odero Gor.

He pleaded not guilty to the charge and was remanded in custody. Through his lawyer miss Nekesa Advocate, he has now applied to be released on bond pending the trial.

Miss Nekesa Advocate submitted that under Art 49 (1) (h) of the constitution, this offence is bailable. That since the accused was arrested in 2009 the matter has never proceeded and that the accused is the breadwinner of his family. She submitted that the accused shall attend court for all mentions and hearings and abide by all the conditions set by this court. Further that he shall conduct himself in a proper manner.

Miss Valery for the state opposed the application stating that the offence was committed in the context of a community where the accused and others in a mob murdered the deceased then burnt the body and as this happened in the full view of the community the accused may be met with a lot of hostility. She however submitted that should he be released on bond it should be upon such terms that he shall not abscond.

In response Miss Nekesa contended that no compelling reasons had been advanced and the state counsel had merely reiterated the particulars of the charge sheet. She submitted that the accused is innocent until proved guilty and there is no evidence that the community will be hostile. She suggested that the accused could even move to another town and reiterated that he shall abide by all the conditions that may be imposed.

The law as it stands Art 49(1)(h) of the constitution – is that an accused person is entitled to bond save where there are compelling reasons not to admit him to bail. The responsibility of demonstrating the compelling reasons rests upon the prosecution. In the instant case what the state has advanced as a compelling reason is that the accused may be met with hostility as the offence was committed in full view of the community. Is this a compelling reason?

My finding is that it is not. The state counsel is not even certain that that is the case: she contends that it may be the case. Moreover the primary consideration in granting bail is whether the accused shall turn up for the trial. There is no allegation that he shall abscond.

Accordingly I allow the application in the following terms:-

1. ***That the accused shall execute a bond of Kshs.3 (three) million with 2(two) sureties of like amount to be approved by the Deputy Registrar.***
2. ***That the accused shall attend court once a month for the mention of his case.***
3. ***Hearing on 23.4.2013.***

Ruling dated, signed and delivered at Homa Bay this 28th day of March 2013.

E.N. MAINA.
JUDGE.

In the presence of:
Eudice Okombo Dholuo interpreter.
Miss Valary for the Republic
Mr. Nyauke for the Accused.
Accused person.