



**REPUBLIC OF KENYA**

Cases in Magistrate Courts

**Criminal Case 1 of 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MOSES OCHIENG MATINDE & 2 OTHERS.....ACCUSED**

**RULING.**

The 3 accused persons all members of one family are charged with murder C/Sec 203 as read with S. 204 of the penal code. They all pleaded not guilty and have through their Advocate G.S. Okoth applied for bond pending trial.

The application was canvassed before me on 12.3.2013. Mr. Ongoso, Advocate for the accused persons prayed that the accused persons be released on bond on reasonable terms. He told the court that the 1<sup>st</sup> and 3<sup>rd</sup> accused persons are spouses and that they have left their children one of who is suckling at home. He stated that the 2<sup>nd</sup> accused is a student at Lambwe secondary school and supplied documents to prove that. He submitted that there is no likelihood of violence were the accused persons to be released on bond as the affected families have since reconciled.

Further that there is no likelihood of their jumping bail.

The application was however opposed. Miss Valery – State Counsel – submitted that granting the accused persons bond may be risky to them. That however should the court do so then it must be on terms that they are not likely to abscond and that they attend court at regular trials.

In reply Mr. Ongoso contended that the state counsel was speculating that the accused will not attend court. He submitted that the accused shall furnish sureties who shall also compel them to attend court. That on the issue of the society not accepting the accused persons back is neither here nor there. He urged me to allow the application.

I have considered the submissions by both sides carefully. The law now is that all offences are bailable unless there are compelling reasons.

- Article 49(1) (h) of the constitution, it cannot be emphasized that the duty to demonstrate those compelling reasons is upon the prosecution.

In the instant case only one reason has been advanced by the state and that is that it may be risky to them. The circumstances of the offence are that the accused persons committed this offence when an attacker known to them attacked the 1<sup>st</sup> accused. So is that a compelling reason? This must be considered bearing in mind that the main consideration in an application ought to be whether the accused shall turn

up at the trial.

In my view a compelling reason would be one that carries so much weight as to leave the court with no alternative than to withhold bond. It is my finding that the reason advanced is not one such reason. Indeed the state counsel has no demonstrable evidence that the accused persons would be at risk. Neither did she suggest that they are likely to abscond.

Accordingly and taking the seriousness of the offence into account I do grant the 3 accused persons bond in the following terms:-

- 1. That each accused person shall execute a bond of Kshs.2 (two) million with one surety of like amount.**
- 2. Deputy registrar to examine/Approve the sureties.**
- 3. That pending the hearing and determination of their case, they shall attend court once a month.**
- 4. Hearing on 25.4.2013.**

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 Valery for the Republic  
Mr. Ongoso for the Accused.  
Accused person.