

REPUBLIC OF KENYA

High Court at Mombasa

Criminal Case 26 of 2008

REPUBLIC.....PROSECUTION

VERSUS

1. DANSON MGUNYA

2. KASSIM SHEE BWANA MOHAMMED.....ACCUSED

RULING

In this application Dr. Khaminwa for the accused has applied that the accused be released on a free-bond. This is a very old case which first came to court in October, 2010. Although suspects on murder charges were initially not entitled to bail, following the promulgation of the Constitution of Kenya 2010, Hon. Justice Mohamed Ibrahim granted to the accused a bond of Kshs. 1.0 million plus surety. The accused did obtain a surety and has been out on bond. On 20th March, 2013 the said surety applied to withdraw on the basis that she required the Title Deed which she had deposited in court for another matter. Hon. Justice Martin Muya discharged the surety and directed that the accused may be released on bond with a reduced surety of Kshs. 300,000/=. The accused was unable to secure a new guarantor and thus remains in custody.

Dr. Khaminwa in his submissions argued that accused was not a flight risk as he had been diligent in attending court while out on bond. He submits that the accused would be released on a free bond.

I have considered this application. I have also considered the fact that this is an extremely old case. The delay was caused partly by the elevation of Justice Ibrahim to the Supreme Court and partly due to indication by the defence that they intended to file a constitutional reference to challenge the continued prosecution of the accused – this latter line of action has now been abandoned. I note that Justice Muya did substantially reduce the bond terms to Kshs. 300,000/= from the initial Kshs. 1.0 million granted by Justice Ibrahim. I take into account the fact that murder is a serious charge which attracts a possible death penalty. Taking all factors into account I find that the reduced bond term of Kshs. 300,000/= plus 1 surety is both fair and reasonable and I am not inclined to interfere with that decision. As such I do decline to release the accused on a free bond.

In view of the fact that accused has requested to be heard in a different court, I do hereby direct that hearing will proceed in this court on 7th June, 2013.

It is so ordered.

Dated and delivered in Mombasa this 29th day of May, 2013.

M. ODERO

JUDGE

In the presence of:

Dr. Khaminwa for Accused

Court Clerk Mutisya