



REPUBLIC OF KENYA

High Court at Kisii

Criminal Case 63 of 2011

REPUBLIC PROSECUTOR/RESPONDENT

VERSUS

EVANS MOGONDO ONDIGO PACCUSED/APPLICANT

RULING

1. The accused person in this case, Evans Mogondo Ondigo is before this court on one of murder contrary to section 203 as read with section 204 of the Penal Code, the particulars being that on the 14th day of July 2011 at Rangenyo Village in Nyamira County within the Republic of Kenya, he murdered Richard Obadia. The accused pleaded not guilty and is awaiting trial.
2. In the meantime, he has asked the court to release him on bail/bond on such terms as the court may determine pending trial of his case. The application which is mounted under **Articles 19-24 and 49 (1) (h) of the Constitution of Kenya** and **Section 124 of the Criminal Procedure Code, Cap 75 Laws of Kenya** is premised on grounds, *inter alia*, that the accused/applicant is the sole bread winner of his family and that he has a constitutional right to be released on bond. The applicant has also sworn an affidavit in support of the application. He avers therein that apart from the fact that he is his family's sole bread winner, it is likely that this case will take a long time before it is heard and determined. He also says that he is a person of fixed abode and undertakes to abide by any conditions the court may impose to govern his release on bond.
3. Until the promulgation of the Constitution of Kenya 2010, murder suspects and suspects of violent robbery, were not eligible for bond. The new constitutional dispensation under **Article 49 (1) (h)** provides that an arrested person has 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 released. The burden of showing that there are compelling reasons not to release an accused person on bond lies with the prosecution. It is also to be noted that the final decision to release or not release an accused person on bond is within the discretion of the court hearing the application.
4. In the instant case, counsel appearing for the state informed the court at the hearing of this application on 6th May 2013 that the state had no compelling reasons not to release the accused on bond. He pointed out however that the court should impose such terms as would compel the accused to attend court until the case against him is heard and determined.
5. What is before me is therefore a blank sheet. On this sheet I would like it noted that the incidence of murder cases is now steadily on the rise in this part of the world, as the statistics speak for

themselves. Over the last three (3) years, there are no less than 100 murder cases registered at our registry each year. In 2012 alone, there were slightly over 150 such cases. In 2013, up to mid May alone, there are over 60 such cases. The trend is worrying and some people opine that this trend may be as a result of the knowledge that accused persons will freely get bond. This is a matter that the court does not take lightly for two reasons: one is that the security of an accused person is not guaranteed after being granted bond and two families of the victims might begin to feel cheated that suspects get back into their midst no sooner than they are arrested.

6. It is not in doubt that these are competing interests that the court must consider before deciding whether or not to grant bond even though the state has said there are no compelling reasons. This court does not have the benefit of a pre-bond report which would give a clearer picture of the situation on the ground. The bottom line however is that the accused has a right to be released on bond on such terms as would ensure he attends court dutifully until his case is heard and determined or until further orders of the court. In this regard, I make the following orders:-

- 1) *The accused may be released on his own bond of Kshs. Five Million (Kshs.5, 000,000/=) only with two (2) sureties of a like amount.*
- 2) *In the alternative, he may be released on cash bail of Kshs. Five Million only (Kshs.5, 000,000/=).*
- 3) *Any sureties shall be approved by the Deputy Registrar of this court.*
- 4) *Once released on bond, the accused shall appear before court for the mention of his case once every thirty (30) days until the case is heard and determined, or until further orders of this court, in default of which the bond shall stand cancelled and/or the cash bail shall be forfeited.*
- 5) *Mention on 24/06/2013.*

7. It is so ordered.

Dated and delivered at Kisii this 23rd day of May, 2013

RUTH NEKOYE SITATI
JUDGE.

In the presence of:

Mr. Bigogo for Ochoki for Accused/Applicant

Mr. Shabola for State

Mr. Bibu - Court Clerk