



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE (MURDER) NO.143 OF 2012

REPUBLIC PROSECUTOR

VERSUS

DORIS NYANDUKO MAKOMBI ACCUSED

RULING

1. The accused in this case, Doris Nyanduko Makombi is charged with one count of murder contrary to **section 203** as read with **section 204** of the **Penal Code**, it being alleged that on the 18th day of November 2012, at Nyansaga village, Riateba sub location, in Nyanguru location of Marani District within Kisii County, she murdered Hellen Kemunto Ondieki. The accused has denied the charge and is awaiting trial.
2. In the meantime, the accused seeks to be released on bond pursuant to **Article 49 (1) (h)** of the **Constitution of Kenya 2010**.
3. The State filed a Replying Affidavit sworn by Number 70510 Sgt Onyapid Joab of Rioma police station who is also the investigating Officer in this case. At paragraphs 3 and 5 of the said affidavit, the deponent states:-

“3. THAT I have completed my investigations and do not have any compelling reasons to oppose the application for bail/bond in respect to the accused herein.

5.THAT I leave it to the discretion of the court to either grant or not to grant the bond, but if the Hon. Court so grants, I pray it imposes such terms as to ensure attendance of the trial by the accused.”

4. After the filing of the Replying Affidavit the court ordered for a Bail Assessment Report which was filed on 20th September 2013. From the said report, the following information emerges:-
 - *the accused is aged 38 years, is a farmer and small scale business person selling food stuffs;*
 - *the accused is a mother of 3 children aged 17, 11 and 8 years respectively, all of whom are school going;*
 - *the accused’s husband, Samuel Makombi who is also a farmer is currently ill and is on medication for diabetes and hypertension;*
 - *though cooperative, accused appears withdrawn, probably due to depression, is asthmatic and suffers occasional distress and pain due to fibroids;*
 - *the accused’s family is financially strained, and especially after the accused was arraigned in court, forcing her 17 year old son to drop out of school;*
 - *the accused’s home environment is generally supportive of her and her family, and she has a strong social network of friends. She is a member of the choir at Rietunye SDA Church.*

- *the victim's family have no problem with the accused being released on bail/bond.*
5. In summary, the Bail Assessment Report recommends that the accused is a suitable candidate for bail, although the accused pleads for lenient bail/bond terms due to the financial strain that is experienced by her family.
 6. Under the Constitution, the party charged with the burden of showing that there are compelling reasons to deny an accused person the right to bond is the State. In the instant case, the State has indicated that it has no compelling reasons to offer to the court as to why the accused should not be released on bond.
 7. One of the primary concerns of the court in dealing with applications of this nature is whether the accused, upon being released on bail./bond shall present herself to court until her case is heard and determined.
 8. In the instant case, I am persuaded that a combination of the averments of the Replying Affidavit and the Bail Assessment Report are in favour of the accused and it can be reasonably inferred that the accused is not a flight risk.
 9. Accordingly, and for the reasons given above, I allow the application for bond on the following terms:-
 1. *The accused may be released on cash bail of Kshs.500,000/= plus 2 sureties in the sum of Kshs.500,000/= each; OR*
 2. *The accused may be released on bond of Kshs.1,000,000/= plus 2 sureties of a like amount.*
 3. *Any sureties shall be approved by the Deputy Registrar of this Honourable Court.*
 4. *Once released on bond, the accused shall attend the Deputy Registrar of this Honourable Court once every 30 days pending the determination of the trial or until further orders of this Honourable Court.*
 5. *Mention on 30th October 2013.*
 10. Orders accordingly.

Dated and delivered at Kisii this 30th day of September, 2013

RUTH NEKOYE SITATI

JUDGE

In the presence of:

Mr. Bigogo (present) for Accused

Mr. Shabola (present) for State

Mr. Bibu - Court Clerk