



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE (MURDER) NO.89 OF 2013

REPUBLICPROSECUTOR
R

VERSUS

ISAACK MWITA MAGENA ALIAS MWITA MUSA ACCUSED

RULING

1. The accused person herein, Isaack Mwitā Magena alias Mwitā Mūsā is before this court on one count of murder contrary to **section 203** as read with **section 204** of the **Penal Code**, the particulars being that on the 23rd day of July 2013, at Gibareri village in Maeta Location of Kuria East District within Migori County, he murdered Francis Mwitā. He has denied committing the offence and is awaiting trial.
2. In the meantime, the accused seeks to be released on bail/bond in accordance with the provisions of **Article 49 (i) (h)** of the **Constitution of Kenya 2010**.
3. The State filed a Replying Affidavit dated 18th September 2013 sworn by No.51568 Cpl Francis Kivitu of CID Office, Ntimaru. The deponent says that the State has no compelling reasons why the accused may not be released on bail/bond.
4. In addition to the Replying Affidavit, the court called for and obtained a Bail Assessment Report which reveals that the accused person seems to be a humble and truthful person and that members of his family are ready and willing to stand surety for him. Though the contents of the Bail Assessment are mere statements which have not been verified by any form of cross-examination, the Report is favourable to the accused. The only caution that this court must exercise is to ensure that the terms of the bond are such as would make the accused attend court each and every time he is required to do so during the pendency of his case.
5. In the circumstances of this case, this court is satisfied that the accused is a good candidate for bail/bond. Accordingly, I grant the accused bail/bond terms as follows:-
 - i. *The accused may be released on his own bond of Kshs. One Million (Kshs.1,000,000/=) with 2 sureties of a like amount.*
 - ii. *The accused may deposit into court the sum of Kshs. Five Hundred Thousand (Kshs.500,000/=) and provide 2 sureties in the sum of Kshs. Five Hundred Thousand (Kshs.500,000/=) each.*
 - iii. *Accused shall attend the Deputy Registrar for the mention of his case once every thirty (30) days pending the hearing and determination of his case or until further orders of this court. Mention on 28/10/2013.*
 - iv. *The accused shall remain within the jurisdiction of this court unless a court order permits his absence.*
6. Orders accordingly.

Dated and delivered at Kisii this 27th day of September, 2013

RUTH NEKOYE SITATI

JUDGE

In the presence of:

Miss Cheruiyot for State

Mr. S.M. Sagwe for Accused

Mr. Bibu - Court Clerk