

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE (MURDER) NO.100 OF 2010

REPUBLIC PROSECUTOR

VERSUS

VINCENT MICHIRA OBEBO alias ISANDA ACCUSED

RULING

1. The accused herein, Vincent Michira Obebo alias Isanda 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 30th day of October 2010 at Nyamware sub location in Keumbu Division within Kisii County together with another not before court, murdered Leonida Magata Nyariki. He has denied the charge and is awaiting trial.
2. In the meantime, the accused prays that he be released on bail/bond. The State did not file any objection to the application but the court called for and obtained a Bail Assessment Report which was filed in court on 14th August 2013. From the said report, it is indicated that none of the family members is ready and willing to stand surety for the accused in case the court makes an order for bond requiring sureties to stand for him. The report also indicates that the accused's family members are not ready to accept him back in their midst and that the mood in the community is less than friendly towards the accused. The report also reveals that members of the family of the deceased have kept their feelings towards the accused close to their chest.
3. The **Constitution of Kenya 2010** provides under **Article 49 (1) (h)** 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 party charged with the responsibility of showing that there are compelling reasons why the bail/bond should not be granted is the prosecution. In this case the prosecution has not filed any Replying Affidavit to indicate to the court that there exist such reasons.
4. Should the accused's request be granted in the absence of a Replying Affidavit or grounds of opposition by the State? In the case of **Wainaina –vs- Republic [1990] KLR 332**, the court persuasively held that when dealing with bail/bond applications, the court so dealing is entitled to take into account the circumstances of which the charges are and weigh them in deciding whether or not the applicant should be granted bail. In the Malawian case of **Languzi –vs- Republic MSCA No.1 of 1995** (unreported) the court was of the view, and I think quite rightly so, that each application for bond must be considered on its own merit, based on prevailing circumstances, with the court requiring the State to prove to its satisfaction that in the circumstances of the case, the interest of justice requires the accused to be deprived of his right to be released from detention. It is thus never the duty of the accused to prove that he should be released on bond; it is the State to show cause why the accused should be detained pending trial.
5. In **Republic –vs- Dorine Aoko – NKR HCCR Case No.36 of 2010 (UR)** (unreported) Emukule J in considering an application for bond stated in part of his ruling that persons who are charged with offences such as treason, murder and robbery with violence, should not easily be granted bail/bond because in his view, **“it would thus hurt not merely society's sense of fairness and justice, and more so, the kin and kin of the victim to see a perpetrator of murder, treason or violent robbery (committed or attempted) walk to the street on bond or bail pending trial. A charge of murder, treason, robbery with violence (committed or attempted) would thus be a compelling reason for not granting an accused person bond or bail ---.”**
6. It is to be appreciated that Article 49 (1) (h) of the Constitution does not categorise those arrested persons who may or may not be released on bond. The provision is a blanket provision so that in

- common parlance every Tom, Dick and Harry would be entitled to be released on bail/bond unless there are compelling reasons to make a contrary finding. One of these reasons in my view, is whether the accused will present himself to the court whenever he is required to do so during the pendency of his trial.
7. I will now revert to the Bail Assessment Report which shows that the accused is a farmer/Kenya Power Employee; he is aged 42 years and has 4 (four) young children all of whom are lower primary school pupils and that the home environment is not conducive for the accused's release. Although the contents of the Bail Assessment Report have not been tested by cross examination, as held by the Court of Appeal in **Kyalo –vs- Republic [2009] KLR 325**, they nonetheless provide a helpful guide in determining whether or not to grant the application. The report does not recommend bond. It is trite law that courts do not make orders in vain so that where it is clear as it is in this case that the accused person has no people willing to stand surety for him, any orders made by this court requiring sureties shall be orders made in vain.
 8. Accordingly, and for the reasons above stated, the application for bail/bond pending trial is dismissed.
 9. It is so ordered.

Dated and delivered at Kisii this 7th day of September, 2013

RUTH NEKOYE SITATI

JUDGE.

In the presence of:

Miss Cheruiyot for State

Mr. B.N. Ogati h/b for Ondari for Accused

Mr. Bibu - Court Clerk