

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL MURDER NO.64 OF 2013

REPUBLIC PROSECUTOR

VERSUS

FRANCIS OMBUNA OCHOI ACCUSED

RULING

1. Francis Ombuna Ochoi is charged with one count of murder contrary to **section 203** as read with **section 204** of the **Penal Code**, the particulars being that on the 14th day of May 2013 at Nyamwane village within Kisii County in the Republic of Kenya, he murdered Starford Ombuna. He pleaded not guilty and is awaiting trial.
2. Meantime, the accused wishes to be released on bond. Mr. Okenye, who appears for the accused submitted that the accused has a constitutional right to be admitted to bond or bail on reasonable conditions pending trial of his case. **Article 49 (1) (h)** of the **Constitution** under which this application is made 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.”
3. The duty to demonstrate to the court that there are compelling reasons why the accused herein should not be released on bond entirely rests upon the prosecution. In the instant case, the State is not opposed to the accused being released on bond although the final word in this, as in all other matter in which a court has to exercise its discretion, rests with the court. The Affidavit by the State is sworn by No.67867 PC

Alfred Nasio of Kisii Police Station.

4. There is also on record a Bail Assessment Report dated 25th October 2013. The report shows that though the accused is gentle by nature, he can be aggressive when drunk. The accused has 3 living children. The fourth child is the deceased. Apparently, the accused says he committed the offence in a fit of anger and while under the influence of drink. He wants reconciliation with his wife and other children.
5. Although it is apparent that there are no compelling reasons why accused may not be released on bond a reading of the Bail Assessment Report shows that there is a matter that is suitable for plea bargain. In the circumstances, I decline to grant bond but order that both parties reconsider the facts of the case with a view to deciding whether or not the charge of murder can be reduced to the lesser charge of manslaughter.
6. Accordingly the application for bond is refused for now. Mention on 16th January 2014 for an indication from the parties as to which way the matter shall proceed.
7. Orders accordingly.

Dated and delivered at Kisii this 19th day of December, 2013

R.N. SITATI

JUDGE

In the presence of:

Mr. Shabola (present) for State

Mr. Minda for Accused

Mr. Bibu - Court Clerk