



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE (MURDER) NO.72 OF 2013

REPUBLIC PROSECUTOR

VERSUS

S N M G ACCUSED

RULING

1. The accused person herein, S N M G is charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars being that on the 1st day of January 2011 at [particulars withheld] in Kuria East District within Migori County, he murdered J M C. The accused has pleaded not guilty and is awaiting trial.
2. In the meantime, the accused has moved the court for an order granting him bond awaiting trial. The application for bond is made pursuant to the provisions of **Article 49 (1) (h)** of the **Constitution** which is to the effect that every arrested person has the right to be released on bail/bond pending trial on such terms as the court considers reasonable unless there are compelling reasons why bond should not be granted.
3. The application for bond is opposed vide the Replying Affidavit sworn by Number 7710 Cpl. Willy Kiema on 10th June 2013 and filed in court on 19th July 2013.
4. In the affidavit Cpl Kiema depones at paragraph 7 thereof that the accused is a flight risk since upon committing the alleged offence in January 2011, he fled to Tanzania from where he was arrested sometime in June 2013 after he had stolen some livestock. The deponent also avers that the accused person is a habitual offender, having committed other offences such as rape, grievous harm and stock theft. He urges the court not to grant bond to the accused.
5. In considering applications of this nature, the court must consider the circumstances surrounding the commission of the offence, the gravity of the offence and whether or not the accused is the kind of person who will attend court as and when required to do so once he is released on bond. The importance of an accused person attending court during the pendency of his case cannot be over emphasized because where there is no accused person there is no case because a case cannot proceed in the absence of an accused person.
6. In the instant case, the State has expressed fear that the accused is likely to take flight if what he did upon commission of the alleged offence is anything to go by. To assist the court in dealing with this matter the court called for and was furnished with a Bail Assessment Report dated 23rd October 2013. In the report, the accused is said to be 25 years old, is married with 3 children all below the age of 7 years. The report also shows that the accused's community is not supportive of him and that the accused keeps violent and criminal minded company. The report also adds weight to the Replying Affidavit to the extent that the accused is general involved in criminal activities of a wide ranging nature within his community, and that whenever he commits a crime, he runs away to neighbouring Tanzania.
7. After carefully weighing the prosecution and cons of this application by the accused person, I have

reached the conclusion, I have reached the conclusion that there are compelling reasons why accused may not be released on bond. First, I am satisfied that the accused person is a flight risk should he be granted bond. I am also satisfied that the accused is a threat to community peace and stability if he is released on bond. The above reasons are in my view very compelling reasons to warrant the accused not to be released on bond.

8. The application is therefore dismissed. The accused shall conduct his case from behind bars.
9. Orders accordingly.

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

R.N. SITATI

JUDGE

In the presence of:

Mr. Imbali (present) for State

Mr. S.M. Sagwe (present) for Accused

Mr. Bibu - Court Clerk