



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE (MURDER) NO.70 OF 2013

REPUBLIC PROSECUTOR

VERSUS

BENARD OBAIGWA ATEI ACCUSED

RULING

1. The accused person herein, Benard Obaigwa Atei 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 June 2013 at Esamba village in Bosaragei sub location in Nyamira North District within Nyamira County, he murdered Damaris Kemunto Momanyi. He had denied the offence and now awaits trial.
2. After the plea on 11th June 2013, the case was fixed for mention on 24th September 2013 when the State would be required to show cause why the accused person could not be released on bond pending trial in keeping with **Article 49 (1) (h)** of the **Constitution**. **Article 49 (1) (h)** of the **Constitution** provides that every arrested person has a right to be released on bond unless the State demonstrates that there are compelling reasons why an order releasing such a person on bond should not be made.
3. The State did not file any affidavit either in support of or against the order sought by the accused person. On the 7th November 2013, Mr. Imbali, Principal Prosecution Counsel conceded the application on grounds that the office of the DPP was yet to receive instructions on whether or not to oppose the application.
4. In the meantime, the court called for and had availed to it a Bail Assessment Report dated 7th November 2013. The report shows that the accused is a young man aged 24 years, is a Form one school dropout and is unmarried. It also appears from the said report that the community from which the accused hails is not averse to him being released on bond to be secured by the accused's father, Frederick Atei Sagero who holds title deed to family land.
5. In considering the instant application, the court must be guided by the underlying need for an accused person to attend court whenever he is required during the pendency of his/her case. A case without an accused person is no case at all and the absence of an accused person from court is likely to result in an injustice to the victim's family if the case is dismissed without taking of evidence.
6. In the instant case, the accused appears to have a stable family set up that can support him during the pendency of the case by ensuring that he attends court as and when he is required to do so. In the circumstances, I am of the considered view that the accused person herein is a good candidate for bond. I however hasten to add that the offence of murder is a very serious crime and although the accused is only a suspect, the court cannot close its eyes to the impact of the said crime on the victim's family.
7. Accordingly, the bond application is allowed on the following terms:-

1. *The accused may be released on his own bond of Kshs.1,000,000/= (Kenya Shillings One Million) plus 2 sureties of a like amount.*
2. *The sureties shall be approved by the Deputy Registrar of this court*
3. *The accused shall attend court once every 30 days for the mention of his case until the case is heard and determined or until further orders of this Honourable Court.*
4. *In default of any one appearance for no justifiable cause, the bond shall stand cancelled and the sureties called to account.*
5. *Mention on 17/01/2014.*

8. Orders accordingly.

Dated and delivered at Kisii this 17th day of December, 2013

R.N. SITATI

JUDGE

In the presence of:

Mr. S.M. Sagwe for Ochoki for Accused

Mr. Imbali (present) for State

Mr. Bibu - Court Clerk