



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

CRIMINAL REVISION NO. 1214 OF 2018

REPUBLIC.....PROSECUTOR

V E R S U S

EVANS OCHIENG RACHAR.....ACCUSED

RULING

1. The Applicant is facing a charge of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. He is charged together with 2 others.

2. Plea in this case was taken on 12th October 2015, six weeks after the Applicant and his co-accused were arraigned in court.

3. An application for bail pending trial was filed by the Applicant's co-accused in the case and was converted before Mutuku Judge on 18th April, 2016.

In its ruling on 26th April, 2016, the court called for Probation Reports on the accused. They were eventually filed and bail granted on 12th July, 2015.

4. On application for review of bond terms by Mr. Mogikoyo advocate on behalf of the 1st and 2nd accused and for bond on behalf of the 3rd accused this court varied earlier bond terms given in 2015 by reducing them to cash bail of KShs.100,000/= each and in the alternative to bond of KShs.300,000/= with one surety of like sum.

The court observed then that the State was not opposing the application for review by all the accused.

5. The Applicant's co-accused were able to post the bond terms. The Applicant has remained in custody ever since 6th February 2015, a period of 3 years and 3 months. The Applicant applied for a review of the bond terms on 1st August, 2018 which was unopposed. The court reviewed the bond down to cash bail of KShs.40,000/=.

6. The Applicant filed an application in person dated 13th December, 2018 seeking a further review of his bond terms in this case. When the application came up for hearing on 5th February 2018, the State did not oppose the application seeking rather that the terms be such as would ensure the accused attendance in court.

7. Mr. Masara for the accused asked the court to give the Applicant free bond arguing that he was a first born child of a single mother and that he has been unable to raise the bond because he comes from a humble background.

8. I have had occasion to read the Pre-Bail Report by the Probation dated 13th June, 2016. It shows that as at that date the Applicant was 27 years old, was resident of Kayole and is married with one child. I noted that his mother was a teacher in Eldoret at the time the Probation Report was filed.

9. Bond is a constitutional right prescribed under **Article 49(1)(h)** of the **Constitution**. Every accused person has a right to be released on bail and or bond so long as there are no compelling reasons to deny him that right. In this case, no reasons leave alone compelling ones were advanced to deny the Applicant bail.

10. Let me state categorically that bail is not meant for the rich alone. A court is therefore enjoined to give reasonable bond terms, based on the peculiar circumstances of the case, including those of the accused.

11. The Probation Report shows that the Applicant is a first born of a widowed mother. The rest of the siblings were all in school at different levels. His inability to raise the bond terms have ably been demonstrated considering he has been in custody for over 3 years despite having

bond terms.

12. It is also important to note case has never begun because the prosecution has not put any witness to the stand citing many reasons.

13. Having taken his circumstances into consideration as ably spelt out in the Pre-Bail Probation Report and his affidavit and the delay occasioned by the prosecution, I find merit in his application.

14. I will allow the Notice of Motion application dated 13th December, 2018 and vary the bond terms previously granted to the Applicant to the following terms:

i. Applicant/2nd Accused may be released on a bond of KShs.50,000/= with one surety of like sum.

ii. The surety should be his mother who will provide her salary payslip, copy of identity card and 2 passport size photographs as security for the Applicant/2nd accused release.

15. The case comes up for hearing on 13/14/15/05/19. The accused is remanded in custody till then.

DATED AT NAIROBI THIS 14th DAY OF FEBRUARY, 2019.

LESITT, J

JUDGE