



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.25 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

DOMINIC MURINGE NYAUNDI.....ACCUSED

RULING

1. The accused person herein **DOMINIC MURINGE NYAUNDI** is charged with the offence of **Murder contrary to Section 203** as read with **Section 204 of the Penal Code**.

The particulars of the charge are that on 14th March 2010 along Enoretet-Enoosaen Road in TransMara District jointly with others not before the court murdered **CHARLES OUMA OBAJE**.

2. The accused pleaded not guilty to the charge and is still awaiting his trial which has, as at the time of writing this ruling, proceeded with 5 prosecution witnesses.

3. The accused had on **11th February 2011** applied to be released on bond pending his trial which application was on **10th February 2012** dismissed by this court, differently constituted, on the basis that he was a flight risk.

4. On **22nd October 2015**, Mr. Morache counsel for the accused renewed the accused's application for bond while stating that a lot of time (*more than 3 years*) had lapsed since the accused was denied bond and that with the passage of time, circumstances had changed.

5. The State did not file any replying affidavit to show if there were any compelling reasons to warrant the court to continue denying the accused bond.

6. A fresh pre-bail assessment report filed by the Probation Officer on **18th December 2015** recommended that the accused person is suitable to be granted bond on reasonable terms as he had relatives who were willing to stand surety for him.

7 I have taken into consideration the fact that the accused has been in custody since March 2010 when the offence was committed. I also note that initially, the State had opposed the accused's release on bond on the basis that he could interfere with witnesses if granted bond. To-date, most of the witnesses have testified and on **19th January 2016**, Mr. Otieno counsel for the State intimated to the court that he had only 3 more witnesses to call 2 of whom are government officials. Under those circumstances, one cannot say that the accused could still be able to interfere with the prosecution witnesses.

8. Lastly, the fear expressed by the State that the accused could jump bail if granted bond has been

dispelled by the Probation Officer's latest report filed in court which is categorical that the accused had a home and relatives who were ready, able and willing to stand surety for him. Above all, the court takes cognizance of the fact that bond is a constitutional right of every arrested person that can only be denied where the State provides compelling reasons.

9. In the instant case, the State did not provide fresh reasons or at all, why the accused should be denied bond. In the circumstances, I hereby allow the accused's application for bond in the following terms:

- a) The accused person may be released on bond upon executing his own personal bond of Ksh.500,000/= with 2 sureties of a similar amount.**
- b) The proposed sureties shall be approved by the Deputy Registrar of this court.**
- c) The accused shall attend court whenever required to do so until the case is heard and determined or until further orders of this Honourable Court.**
- d) Should the accused default in any one court appearance without justifiable cause then the bond shall stand cancelled and the sureties called to account.**
- e) Hearing on 19th April, 2016.**

Dated, signed and delivered in open court this 1st day of February 2016

HON. W. OKWANY

JUDGE

In the presence of:

- Miss. Boyon for the State.
- Accused in person
- Omwoyo: court clerk