



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL (MURDER ) CASE NO. 57 OF 2013**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**ROBERT OKOTH OTIENO.....ACCUSED**

**RULING**

**Introduction**

1. The accused person herein, Robert Okoth Otieno who is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code was granted bond of Kshs.one million with one surety of a like amount. This was on 16.10.2013. Though the hearing has not commenced, the accused has been coming to court as and whenever required to do so. However, on 09.05.2016, the accused person did not appear in court when the case came up for hearing. His bond was cancelled and a warrant issued for his arrest. The case was mentioned on 06.06.2016 and 16.08.2016. On the latter date, the state applied for summons to the surety, Zachary Wandiege Ndege and case fixed for mention on 04.10.2016 when the said surety would either produce the accused or explain to the court why the accused person could not be produced.

2. The accused finally appeared before the Deputy Registrar on 22.08.2016 after he was arrested. He has been in custody since. He appeared before me on 30.08.2016 when his counsel applied for reinstatement of bond. The state objected to the application on grounds that the accused had jumped bail for a second time. The state considered him a flight risk and urged the court to order that he remains in custody. On the other hand, the defence counsel submitted that the accused's failure to attend court on 09.05.2016 was due to confusion over the date when he was required in court. Defence counsel also submitted that the accused person had taken himself to the police station upon learning that a warrant of his arrest was hanging over his head. Because of the contending views, the court ordered parties to file affidavits to enable it get a proper perspective of what may have led to the accused's failure to attend court on 09.05.2016.

3. The accused swore his affidavit on 30.09.2016. He depones that his failure to attend court on 09.05.2016 was due to confusion of dates. He also explains that he attended court on 06.09.2016 when he believed his case was to be heard but his file could not be traced at the registry. He further states that the registry staff promised to contact him once the file was traced but nobody contacted him until 25.08.2016 when his uncle informed him that there was arrant of arrest against him. On the same day, he voluntarily presented himself to the police station and was placed in cells until he was produced in court. He prays to be released since his failure to attend court was not deliberate.

4. During further hearing of the application for bond reinstatement, the state did not oppose the application. I have myself gone through the accused's affidavit and note that though he says he voluntarily went to the police station on 25.08.2016, that assertion cannot be correct because by then he had already appeared in court on 22.08.2016 and placed in custody. The above notwithstanding, I am satisfied that the accused person has learnt the consequences of not adhering to the terms of the bond that he was given. His application for reinstatement of bond is allowed. He will be released on those same bond terms granted to him on 16.10.2013 until the case is heard and determined or until further orders of this court. He is warned that should he default again before the case is heard and determined his bond shall be cancelled so that he proceeds with the case from custody. The surety is also warned that should the accused fail to attend court for no good reason, he (surety) shall be called to account.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 11<sup>th</sup> day of October 2016

**RUTH N. SITATI**

**JUDGE**

In the presence of

.....Mr. Ng'etich .....for the State

.....Mr. Mukabwa holding brief for Minishi.....for Accused

.....Mr.  
Assistant

Okoti.....Court