



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL (MURDER) CASE NO.27 OF 2014

REPUBLIC PROSECUTOR

VERSUS

JOHN MUNGA MANOTI ACCUSED

RULING

1. The accused person herein, John Munga Manoti, is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars thereof being that on the 18th day of February 2014 at Bungu village, Kiomakondo sub location in Manga District within Nyamira County, he murdered David Momanyi Ongeta. He pleaded not guilty and is awaiting trial.

2. In the meantime, and pursuant to the provisions of **Article 49 (1) (h)** of the **Constitution**, the accused person seeks to be released on bond/bail pending trial. **Article 49 (1) (h)** of the **Constitution** provides that an arrested person has the right **“to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”** From a reading of the said provisions, the onus of demonstrating that there are compelling reasons why an accused person may not be released on bond is on the prosecution or the state. However, whether or not an accused person is released on bond is within the discretion of the court, which discretion in my view, ought to be exercised judiciously and not capriciously or whimsically.

3. The main consideration by the court in deciding whether or not to grant bond/bail is whether the accused person will turn up for trial. Other considerations are whether (and this must be proved by the state) the accused person is likely to interfere with witnesses. The court is also under a duty to consider whether by releasing an accused person on bond/bail, the security of either the community or the accused person shall be compromised.

4. In the instant case, the State filed a Replying Affidavit sworn by No.73396 PC Josphat Musyimi dated 6th March 2014. The deponent, who is the Investigating Officer in this matter says that, **“I do not have any compelling reasons to have the accused person denied bail which is their right as provided for in the Constitution of Kenya.”**

5. In addition to the Replying Affidavit, the court called for and was supplied with a Bail Assessment Report dated 26th May 2014, and filed in court on 3rd June 2014. From the said report, the following facts emerge:-

1) The accused is 24 years old, single and a Form I drop out due to lack of interest and poor performance.

- 2) *The accused takes alcohol and hails from a low income earners' family.*
- 3) *The accused has no formal employment, but was before his arrest, a “boda boda” rider.*
- 4) *The deceased was the accused's employer. The family of the deceased is still very bitter.*
- 5) *The family members, except the accused's mother fear for his life should he be released on bond/bail.*
- 6) *The community is afraid that release of the accused on bond would threaten the peace and security of the community.*
- 7) *The accused associates with people who are viewed by the community as being of dubious character.*
- 8) *Immediate release on bond/bail is not recommended.*

6. After carefully considering all the information on record, the issue that arises for determination is whether the court should proceed to grant bond/bail to the accused person herein. Whereas the State has indicated that there are no compelling reasons why the accused person should not be released on bond. The Bail Assessment Report shows that there are several reasons why the accused person should not be released on bond. One of those reasons is that releasing the accused on bond is likely to prejudice the security of the community. It also appears from the same report that the accused's family members do not wish to see the accused person back in their midst for fear of retaliatory attacks. Although the state is under a duty to protect all its citizens, at all times, it is not lost to the court that the state of the country's security at the moment is facing challenges, so that even if the accused were to be released now he may end up not turning up for the hearing of his case.

7. In the premises, the application for bond is refused. The accused person shall remain in custody pending the hearing and determination of his case or until further orders of the court.

8. As this court believes that time heals wounds, the accused person may apply for review of the orders herein after six (6) months from the date of this ruling. Mention on 08/08/2014.

9. Orders accordingly.

Dated and delivered at Kisii this 9th day of July, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Mr. Majale (present) for State

Mr. C.A. Okenye (present) for Accused

Mr. Bibu - Court Assistant