



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.40 OF 2013

REPUBLIC

VERSUS

JAMES ONSERIO OCHOCHI - ACCUSED

RULING

1. The accused, **James Onserio Ochochi** was on **15th April, 2013** charged with one count of **Murder contrary to Section 203** as read with **Section 204** of the **Penal Code**.

The particulars of the offence are that on 11th January 2013 at Omokonge sub-location in Nyamache District within Kisii County in the Republic of Kenya, jointly with another not before the court, murdered **ISAAC OBITA ONGERA**.

2. The accused pleaded not guilty to the charge and applied to be released on bond pending his trial.

3. By an order of this court, though differently constituted, made on 26th August 2013, the accused was granted cash bail of Ksh.100,000/= with two (2) sureties in the sum of Ksh.300,000/= each. The accused did not meet the above stated bond terms and through an application dated 1st November 2013, the accused sought a review of the said bond terms so as to remove the term requiring the deposit of Ksh.100,000/= citing his inability to raise the said amount.

4. This court, (*differently constituted*), made a ruling on 8th May 2014 dismissing the applicant's application for review while stating that the terms of bond already granted were neither unreasonable nor unconstitutional. The trial court then observed that the terms of bond were discretionary in nature and that there was no reason advanced to warrant the interference with the court's discretion.

5. On 22nd October 2015, the accused person made, yet another application for review of the bond terms while still citing his inability to raise the Ksh.100,000/= cash bail. The accused pleaded that the condition for his release on Ksh.100,000/= be removed so that he can execute his own personal bond of an a reasonable amount that the court could grant.

6. I note that it is now over 2 years since the accused person was granted bond on terms that he has to-date been unable to meet. The accused's first application for review of bond terms was rejected more than one year ago.

7. It is now a settled principle that the most important consideration in determining whether or not to

grant bail is whether the accused will attend court for his trial.

8. Article 49 (i) (h) of the Constitution which grants an arrested person a right to be released on bond states:

“An arrested person has a 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.”

In the instant case, there were no compelling reasons for denying the accused bond and that is the reason why his application for bond was allowed way back on 26th August 2013.

9. There is however, a problem with the terms of the bond which the accused is not able to meet especially the requirement of Ksh.100,000/= cash bail. The words “*reasonable conditions*” as envisaged in **Article 49 (1) (h)**, in this court’s humble opinion, connotes a situation whereby what may be reasonable in one case may appear unreasonable in another case thereby calling for the court’s exercise of discretion based on the circumstances or reasons presented in every individual case.

10. The accused in this case has stated that he is completely incapable of raising the Ksh.100,000/= cash bail. His trial has not commenced more than 2 ½ years after he was arraigned in court.

11. I am of the humble view that under the above circumstances, continuing to keep the accused in custody, on the basis that he is unable to raise the cash bail if he can raise any other reasonable security for his attendance, would be an affront to his constitutional right to bail pending his trial.

12. It is for the above reasons that I deem it fit to revise the bail/bond terms as follows;

(i) The accused may be released on his own bond of Ksh.500,000/= with 2 sureties of a similar amount.

(ii) The sureties shall be approved by the Deputy Registrar of this court.

(iii) Once released, the accused shall appear for mention of his case once every 30 days until his case is heard and determined or until further orders of this court.

(iv) Any default in appearance without a justifiable cause shall lead to the cancellation of the bond whereupon the sureties shall be called upon to give an account and make good their guarantee.

(v) Mention on 2nd December 2015.

13. It is so ordered.

Dated, signed and delivered in open court this 4th day of November, 2015 at Kisii.

HON. W. OKWANY

JUDGE

In the presence of:

- Muhindi for the State

- N/A for Mr. Kaburi for the Accused
- Accused
- Ogega: Court clerk