



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.97 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BEN OLE MPINDING.....ACCUSED**

**RULING**

1. The accused herein, **BEN OLE MPINDING**, who is charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code** was on 27<sup>th</sup> February 2015 granted bond by this court, (*differently constituted*) on the following terms:

**“Bond of Kshs.500,000/= with one surety of a similar amount the same to be approved by the Deputy Registrar of this Honourable Court.”**

2. On **4<sup>th</sup> November 2015**, when this matter came up for mention, Mr. Ondari, counsel for the accused, applied for a review of the bond terms stated hereinabove while stating that the accused was unable to raise the surety for ksh.500,000/= because his father, who could have been his surety, had died while he was still in custody.

3. Mr. Ondari submitted that the pre-bail report was favourable to the accused and that the accused had young children to fend for. Mr. Ondari added that the accused could be released on a free bond as he would not abscond or a bond of Kshs.100,000/= to enable his mother stand surety for him.

4. Mr. Muhindi counsel for the State opposed the application to review bond terms while emphasizing that the offence was serious.

5. I have considered the application for a review of the bond terms and the response by the state. I note that bond is a constitutional right of an accused person under **Article 49 (1) (h)** of the **Constitution** and it is on this basis that the court granted the accused bond in the first place.

6. I note that in assessing the reasonable bond terms to grant an accused person, the court is mandated to consider the gravity of the offence that the accused has been charged with among other considerations. In the instant case, the accused has been charged with a capital offence whose mandatory sentence is death in the event the guilt of the accused is established.

7. It is now more than one year since the accused took plea on the charge of murder yet his trial has not began probably due to the high number of pending cases. The case has not been listed for hearing for the entire time that it has been pending before the court.

8. The pre-bail report filed in respect to the accused showed that he was a family man with a fixed abode and that his chances of jumping bail were slim.

9. In view of the above circumstances and taking into account the fact that the primary goal to granting bond is to ensure that an accused person attends court, I hereby set aside/vary the earlier bond terms granted to the accused and review the same as follows:

- a. **The accused may be released on executing his own personal bond of Kshs.500,000/= with two sureties of Ksh.100,000/= each.**
- b. **The sureties shall be approved by the Deputy Registrar of this court.**
- c. **Upon his release, the accused shall attend court for mention once every 30 days until his case is heard and determined or until further orders of this court.**
- d. **In default of (3) above without any justifiable cause the bond shall stand cancelled forthwith and the sureties called to account.**
- e. **Mention on 20<sup>th</sup> January, 2016. Hearing on 2<sup>nd</sup> March 2016.**

**Dated, signed and delivered in open court this 2<sup>nd</sup> day of December, 2015**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Otieno for the State
- Ondari for the Accused
- Njoroge: Court clerk