



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE MURDER NO.129 OF 2013**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**PASCAL OCHIENG LAWRENCE ..... ACCUSED**

**RULING**

1. The accused person herein, Pascal Ochieng Lawrence has moved this court under the provisions of **Article 49 (1) (h)** of the **Constitution** seeking to be released on bail/bond pending the hearing and determination of his murder trial. In the case, it is alleged that the accused committed the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that on the 23<sup>rd</sup> day of November 2013 at Komire village in Awendo Sub County, within the Republic of Kenya jointly with another, he murdered Odudo Opiyo. He has denied the charge.
2. **Article 49 (1) (h)** of the **Constitution** provides for the release on bail/bond of an arrested person unless there are any compelling reasons not to be so released. Prior to the 2010 Constitution, persons charged with murder and other offences which attracted a death penalty on conviction could not be released on bail/bond. There is therefore no doubt that the Constitutional provisions under Chapter Four – The Bill of Rights – of the Constitution are great paradigm shifts from the old constitutional order. If there are no compelling reasons to deny an accused person bail/bond the court can exercise its discretion in favour of the accused.
3. It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the State. The court in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters:-
  - *the seriousness of the offence although this carried greater weight under the old constitutional dispensation;*
  - *the weight of the evidence so far adduced if the case is partly heard;*
  - *the possibility of the accused interfering with witnesses;*
  - *the safety and protection of the accused once he/she is released on bail/bond;*
  - *whether the accused will turn up for trial;*
  - *Whether the release of the accused will jeopardize the security of the community.*
4. In the instant case, the State filed an affidavit dated 21<sup>st</sup> January 2014 and sworn by Number 88105 Police Constable Florence Muthoni in which it is averred at paragraph 3 thereof that as one of the Investigating Officers in the case, she has no compelling reasons why the accused should be denied bail/bond. PC Muthoni is stationed at Awendo Police Station.
5. To assist the court in reaching a fair decision in this matter, the court called for a Bail Assessment

- Report. The report, prepared by Cornel Kirui Towett, a Probation Officer, is dated 21<sup>st</sup> January 2013 though the same was erroneously date stamped 20<sup>th</sup> January 2014.
6. From the Bail Assessment Report, it is indicated that the home environment is conducive for release of the accused person on bond. The report also indicates that the victim's family is not opposed to the accused being released on bail/bond; and that the general mood of the community is favourable since the community members are of the view that the death of the deceased was an unfortunate incident. The accused, who is said to be 21 years old, completed Form IV at the end of 2013. The report also indicates that the accused's family members are willing to deposit title deeds as security for the release of the accused.
  7. I have now carefully considered the application and the responses thereto. I have also read in detail the Bail Assessment Report. After considering all the aforesaid and taking into account the various parameters which this court must consider, the real issue for determination is whether the accused person will turn up for the trial of his case should the court grant him bond. This issue is critical because without the accused, there would be no case, and such an eventuality would run counter to the main function of bail/bond which is to ensure the presence of the accused at the trial. As a matter of law and fact, this court must satisfy itself that the accused will be present at his trial. See **Kisii HC Criminal (Murder) Case No.96 of 2013** (unreported).
  8. Considering all the factors in this case, I am persuaded that there are no compelling reasons why the accused person herein may not be released on bond. The application is therefore allowed on the following terms:-
    1. *Accused may be released on his own bond of Kshs.2,000,000/= (Kenya Shillings Two Million) with 2 sureties of like amounts.*
    2. *The sureties shall be approved by the Deputy Registrar of this Court.*
    3. *Once he is released, the accused shall attend court once every thirty (30) days for mention of his case until the case is heard and determined or until further orders of this court.*
    4. *In default of (3) above, the bond shall stand cancelled forthwith and sureties put to account.*
    5. *Mention on 13/03/2014.*
  9. Orders accordingly.

**Dated and delivered at Kisii this 13<sup>th</sup> day of February, 2014**

**R.N. SITATI**

**JUDGE.**

In the presence of:

Miss Cheruiyot for State

Mr. Minda for Mr. Odero Nyakwana for Accused/Applicant

Mr. Bibu - Court Clerk