



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL MURDER NO. 109 OF 2013

REPUBLICPROSECUTOR

VERSUS

CYPRIAN OGARO OMBUIACCUSED

RULING

1. The applicant herein, Cyprian Ogaro Ombui is seeking to be released on bond pending his trial. He is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the information are that on the 10th day of October 2013 at Omokonge Location in Nyamache District within Kisii County, he murdered Erick Ogaro Omwansu. He has pleaded not guilty to the charge.
2. The applicant makes the instant application under the provisions of **Article 49 (1) (h)** of the **Constitution** which 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.”**
3. The burden of demonstrating that there are compelling reasons for an accused person who applies for bond not to be released on bond rests squarely on the shoulders of the State. Some of the factors to be considered by a court on such applications are:-
 - *The seriousness of the offence;*
 - *If the case is partly heard, the weight of the evidence so far adduced;*
 - *Whether the applicant is likely to interfere with witnesses if he/she is released on bond/bail;*
 - *Whether the applicant will be safe if he/she is released;*
 - *Whether the applicant will turn up for trial once released; and*
 - *Whether release of the applicant on bond is likely to compromise the security of the society.*
4. The courts have held that the most important factor to be considered by the court in applications of this nature is whether the applicant shall turn up for trial. The reason for this unanimous understanding by the courts is that **“the main function of bail is to ensure the presence of the accused at the trial so that if there appears the slightest indication that an accused person is unlikely to attend court once out on bond, then the application to be so released must be refused.”**
5. The question that now arises for determination herein is whether the State has shown that there are compelling reasons why the accused may not be released on bond. In answering this question, it is important to remember that the right to be released on bond as enshrined in the Constitution is not cast in stone, and the court has the final say as to whether or not an applicant can be released on bond.
6. In the instant case, the State informed the court at the hearing of the application that there are no compelling reasons why accused may not be released on bond. In order to confirm that particular

position, the court called for and obtained a Bail Assessment Report on the accused. The report is dated 3rd February 2014, and from it, the court notes the following:-

- *the accused is the seventh child in a family of 7 children.*
 - *both parents are alive.*
 - *the accused appears to be a truthful person.*
 - *the deceased is a cousin to the accused.*
 - *both deceased's and accused's families do not mind the accused being released on bond.*
 - *the accused relates well with other members of the community and is a responsible member of his community.*
 - *family members are willing to stand surety for accused.*
 - *the accused is a student at Gusii Training Institute.*
 - *the life of the accused is not under any threat if he is released on bond.*
7. The court has now carefully considered the application which is not opposed. The court has also carefully considered the Bail Assessment Report on the accused who is a Diploma Student in electrical engineering at Gusii Training Institute. In light of all the information now on record, I am persuaded that the applicant herein is suitable material for bond. Accordingly his application is allowed on the following terms:-
1. *He may be released on his own bond of Kshs.2,000,000/= (Kshs. Two Million only) with 2 sureties of a like amount to be approved by the Deputy Registrar of this court.*
 2. *The applicant shall report to court every 30 days for mention of his case until it is heard and determined or until further orders of the court.*
 3. *In default of (2) above, the bond shall stand cancelled and sureties called to account without any further orders.*
 4. *Mention on 04/03/2014.*
 5. *Accused RIC.*
8. Orders accordingly.

Dated, signed and delivered at Kisii this 6th day of February, 2014

R.N. SITATI

JUDGE

In the presence of:

Mr. P.O. Ochieng for the State

Mr. Minda for Mr. Kaburi Applicant/Accused

Mr. Bibu - Court Clerk