



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE (MURDER) NO.73 OF 2010**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**D N M alias T ..... ACCUSED**

**RULING**

1. The accused person herein, D N M alias T was arraigned before court on 2<sup>nd</sup> July 2010 on one count of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that on the 23<sup>rd</sup> day of December 2009 in Marani District within Nyanza Province, he murdered P K. The accused pleaded not guilty and the case is fixed for hearing on 25<sup>th</sup> March 2014.
2. In the meantime, the accused is seeking to be released on bail/bond pending trial. He has come to court under the provisions of **Article 49 (1) (h)** of the **Constitution** which provides that every 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 application for bond/bail pending trial is opposed vide the Replying Affidavit dated 5<sup>th</sup> June 2012. The deponent of the Replying Affidavit No.79589 Cpl James Nzioka of Rioma police station avers that before his arrest, the accused was at large for 8 months until he was arrested on 21<sup>st</sup> August 2010 by members of the public. He also avers that the accused who is a close neighbour and relative of eye witnesses is highly likely to interfere with and/or threaten them. It is also the contention of the deponent that because the accused cannot live at peace with his neighbours, he is likely to take flight and not to appear for the hearing of his case.
4. To assist it in making a decision on the application before it, the court called for and obtained a Bail Assessment Report which is dated 6<sup>th</sup> June 2012. At the time of the report, the accused was aged 32 years and married. He is an epileptic. The deceased was the accused's step grandmother. The report also shows that the accused is favourably viewed within the community and that members of his family are willing to have him released on bond pending trial. The local administration also confirms that there is no tension between the parties in this matter and that the accused is unlikely to interfere with witnesses.
5. The factors which a court ought to take into account when considering applications for bond are:-
  - i. the seriousness of the offence although this carried greater weight under the old constitutional dispensation;*
  - ii. the weight of the evidence so far adduced if the case is partly heard;*
  - iii. the possibility of the accused interfering with witnesses;*

*iv. the safety and protection of the accused once he/she is released on bail/bond;*

*v. whether the accused will turn up for trial;*

*vi. Whether the release of the accused will jeopardize the security of the community.*

6. Taking into account all the above factors, and while noting that the Bail

Assessment Report is favourable to the accused; I have reached the conclusion that it is not safe to release him on bond at this point in time. His case is fixed for hearing on 25<sup>th</sup> March 2014 and it is the intention of the court to conclude the hearing within the shortest possible time. I am also aware that the State's apprehension of the accused herein taking to flight once released on bond has not been controverted and accordingly, I am satisfied that that apprehension on the part of the State is still real.

7. In the premises and for the reasons above stated, the application for bond pending trial is dismissed.

8. Orders accordingly.

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

**R.N. SITATI**

**JUDGE**

In the presence of:

Miss Cheruiyot (present) for State

Mr. Okenye h/b for Bigogo for Accused

Mr. Bibu - Court Clerk