

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO.5 OF 2014

REPUBLIC PROSECUTOR

VERSUS

MOROMBI SANKARE SETEK ACCUSED

RULING

MOROMBI SANKARE (the accused) faces a charge of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. After taking plea, his counsel Miss Koina applied for his release on bond. The State represented by Miss Nyakeira, opposed bail, saying the situation on the ground is hostile and he may be harmed, and the accused has no fixed abode, so if he is released on bond, chances of him attending court for trial cannot be guaranteed.

In an affidavit sworn by **P.C. Jacqueline Munene** of CID, she deposes that the accused was only traced after enlisting the help of Safaricom, and he was arrested while escaping from the authorities, so police cannot guarantee tracing him.

These claims are contested by the accused's counsel who insists that he hails from Transmara where he has a home and family members. He is described as a herder, who was herding his animals when arrested, and the issue of being a flight risk does not add up because upon release, the accused will go back to his stable family in Trans-Mara.

Bail is a Constitutional right which can only be denied if there are compelling reasons. These may include considerations as to whether the accused is likely to attend trial if released (this is actually the primary consideration). Other factors to consider are whether he is likely to interfere with witnesses, and his own security if released.

It is not denied that police had to trace the accused using Safaricom's enlistment. Further although accused is said to have a home within Trans-Mara, it is quite telling that no specific place i.e. village, centre or school is mentioned with regard to where exactly his home is situated. If he is a herder, then the other issue of concern is whether his profession inclines him to nomadic tendencies when in search of pasture and water – certainly such a scenario would make it very difficult to trace the accused.

These are compelling reasons to persuade me that if released on bail, the accused is unlikely to return for trial. The application for bail thus stands dismissed.

Delivered and dated this 16th day of May, 2014 at Nakuru.

H.A. OMONDI

JUDGE