



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.126 OF 2013

REPUBLIC PROSECUTOR

VERSUS

DENNIS MORINI ONCHIEKU ACCUSED

RULING

1. The accused herein Dennis Morini Onchieku seeks to be released on bail/ bond pending the hearing and determination of his murder trial. The application is made pursuant to **Article 49 (1)** of the **Constitution**. 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 15th day of November 2012 at Muma sub location in Gucha South District within Kisii County in the Republic of Kenya he murdered Justine Onsase Onchieku. He has denied the charge.
2. The court in exercising its discretion as to whether or not to grant bond is guided by the following parameters:-
 - *The gravity/seriousness of the offence;*
 - *The weight of the evidence so far adduced if 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.*
1. In the instant case, the State filed an affidavit dated 19th November 2013 and sworn by Number 59928 Police Constable Job Kipyegon. He has given various reasons why he thinks the accused person should not be released on bond/bail from paragraphs 4, 5 and 7 being that the accused may abscond or is a flight risk and that the accused's life will be in danger if he is so released.
2. To assist the court in reaching a fair decision in this matter the court called for and obtained a Bail Assessment Report. The report was prepared by James N. Ooma, Probation Officer Gucha sub location.
3. From the report, it is indicated that the home environment is conducive for release of the accused person on bond. The report also indicates that the victims family is not opposed to the accused being released on bail/bond and his father and uncle are willing to stand surety for him. Further, the accused is not known to have any criminal antecedents.
4. The accused who is 24 years old is a class 7 drop out and he used to do casual jobs of cutting sugar cane at Awendo Sony Sugar Plantations. His family is engaged in peasant farming.
5. Having carefully considered the application and the response thereto, and having also read the detailed bail assessment report 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 trial

- of his case should the court grant him bond.
6. 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.
 7. Considering all the factors in this case, and in particular the provisions of **Article 49 (1) (h)** and the entire **Chapter Four** of the **Constitution**, I find that there are no compelling reasons why accused 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.500,000/= (Kenya Shillings Five Hundred Thousand) with 2 sureties of Kshs.1,000,000/= each.*
 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 08/08/2014.*

Dated, signed and delivered at Kisii this 9th day of July, 2014

R.N. SITATI

JUDGE

In the presence of:-

Mr. Majale for State

Mr. S.M. Sagwe for Okemwa for Accused

Mr. Bibu - Court Assistant