



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.149 OF 2012

REPUBLIC PROSECUTOR

VERSUS

JOSPCHAT MANOTI OMWANCHA)

DOMINIC OKEMWA OMBOGO)..... ACCUSED

RULING

1. The two accused persons herein Josephat Manoti Omwancha and Dominic Okemwa Ombogo are before this court on one count of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that on the 13th day of December 2012 at Simbauti farm, in Borabu District within Nyamira County in the Republic of Kenya, jointly with others not before court, they murdered Tom Mokurumi. They denied the charge and are awaiting trial.
2. Meantime, both accused person who are represented by M/s Henry Kaburi and C.A. Okenye advocates respectively seek to be released on bond pending trial. The first accused put in a formal application grounded in **Article 49 (1) (h)** of the **Constitution** while the second is also riding on the wings of the same provisions which guarantee an arrested person the right to bond/bail on reasonable terms unless there are compelling reasons why he cannot be released.
3. The application is opposed vide the Replying Affidavit sworn by No.65761 Cpl Japheth Ngetich of CID Keroka. He opposes the application on grounds that:-

- *Josphat Manoti Omwancha disappeared to Nairobi soon after the commission of the alleged offence;*
- *The second accused, Dominic Okemwa Ombogo also disappeared from home after commission of the alleged offence and was not arrested until 04/01/2013;*
- *There are high chances that the accused persons will interfere with witnesses;*
- *If convicted, the accused persons will suffer the maximum penalty of death and the severity of such sentence is a good motivation for taking flight;*
- *the right to bond/bail is not absolute.*

4. The court, in exercising its discretion as to whether or not to grant bond is guided by the following parameters:-

- a. *The seriousness of the offence;*
- b. *The weight of the evidence so far adduced if case partly heard;*
- c. *The possibility of the accused interfering with witnesses;*
- d. *The safety and protection of the accused once he/she is released on bail/bond;*
- e. *Whether the accused will turn up for trial;*
- f. *Whether the release of the accused will jeopardize the security of the community.*

5. To assist the court in reaching a fair decision in this matter, the court called for and obtained Bail Assessment Reports on each of the accused persons. The reports prepared by Peter Mogusu Ayienda, a Probation Officer are dated 25th May 2014. The reports indicates that there are no compelling reasons to deny the suspects bond/bail.

6. From the Bail Assessment Reports, it is indicated that the home environment is conducive for release of the two accused persons on bond. The first accused is a Form 4 leaver with a mean grade of C-(Minus). Before his arrest, he was undertaking a wiring course at Nyamagesa Youth Polytechnic. There are people willing to stand surety for this accused person.

7. The second accused is a standard Eight dropout. He is married and has children. It is not clear from the Bail Assessment Report whether the second accused is 22 or 38 years old. The report indicates that the family can find persons to stand surety for this accused person.

8. In the circumstances, the application for bond by both accused persons is granted on the following terms:-

1. *Each accused person may be released on his own bond of Kshs.1,000,000/= (Kenya Shillings One Million) with two sureties of a like amount.*
2. *The sureties shall be approved by the Deputy Registrar of this Honourable Court.*
3. *The accused persons shall attend court once every thirty (30) days for mention of this case until the case is heard and determined or until further orders of this honourable court I/d the bond shall stand cancelled and sureties called to account.*
4. *The accused persons shall not leave the jurisdiction of this court without permission of the court.*
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. C.A. Okenye for 2nd accused and h/b for H. Kaburi for 1st accused

Mr. Bibu - Court Assistant