



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 94 OF 2014

REPUBLIC.....APPLICANT

VERSUS

JACKSON ONGERI OMANGA.....RESPONDENT

RULING

1. This is an oral application made this 4th day of October by the accused to be granted bond. The accused person was charged of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the night of 17th September, 2014 at Kemera Location, in Manga District within Nyamira County he murdered **Elvis Otwoma Ongeri**. He denies the offence. He now applies for bond to be released on terms and conditions that are reasonable so that he can attend court on the hearing of his case for his home.
2. I bet he relies on article 49(1)(h) of the Constitution of Kenya. By that provision even the offence of murder is bailable, unless otherwise if there are compelling reasons not to grant bond.
3. If there are compelling reasons not to grant bond, it is the duty of the prosecutor or his investigating officer to avail the compelling reasons through an affidavit, outlining the said reason. In the instance case, the replying affidavit dated 3rd November, 2014 was filed in court. At para. 8 thereof the investigating officer, states that there would be contact by the applicant with witnesses two of whom are his family members. One of the witness is his son who is a minor and witnessed the offence. That therefore the applicant is an likely to interfere with the evidence to be tendered against him leading to miscarriage of justice. That before his arrest, the accused had instructed the witness, a minor to lie to the police though he did not.
4. The prosecutor further state that if the applicant is released on bail, his own life will be in danger as the situation on the ground is volatile.
5. That further in view of the severity of the sentence i.e. sentence of death if convicted, the temptation to abscond or go into hiding if released on bond pending trial is real.
6. Counsel for the accused vehemently opposed the stand taken by the prosecutor, not to release the accused on bond. The counsel asserts that what is stated in paragraph 8 of the prosecutor's affidavit is but a mere apprehension, it is not enough to say that there is fear that such and such will happen. Instead, the prosecutor submits the court can stamp it authority on accused telling him not to be in contact. It ismade clear to the accused that if he violated the terms of bond, the consequences dire.
7. He urged the court to exercise its discretion in favour of that accused person, for this is his constitutional right to be admitted to bail.
8. The state, Mr. Otieno, argued that refusal is not based on mere apprehension but on real fear, especially when the accused as revealed in paragraph 8 thereof had attempted to interfere with the minor witness. The suggestion by defence counsel that the accused can be made to vacate his home and live elsewhere is untenable, who will provide the accused with this alternative home and

- where will this home be located? He reiterated the contents of paragraph 9 of the affidavit.
9. Having listened to both submissions it is the discretion of the court to either give bond or decline bond depending on persuasiveness of each submission and subject to the provision of the constitution.
 10. Accordingly, the court decline to give bond to the accused, this is because, not only would he interfere as he had tried to do earlier but he may be safer dealing with his case from custody.
 11. It is so ordered.

Dated and delivered at KISII this 14th day of November, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Magara holding brief for Bigogo for the applicant.

Majale for the state for the respondent

Edwin Mongare court clerk.