



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 103 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOSPAT MUSUNGU AMANI alias JOSEPHAT MUKHONYI.....ACCUSED

RULING

1. This an oral application by the accused's counsel for bond for the accused. The application was made on 29th October, 2014. The applicant, **Josephat Musungu Amani Alias Josphat Mukhonyi** was charged for murder on 26th of September, 2014 contrary to **section 203** as read with **204** of the **Penal Code**, that at Keroka Township in Masaba South District within Kisii County, jointly with others not before court murdered **Charles Onchari Gisebe**. He denies the offence. He now applies for bond as the constitution allows bond provided that there are no compelling reasons not to allow bond.
2. The state, in response hereto, has filed an affidavit dated 27th October, 2014. In paragraph 3 of the said affidavit, the state avers that the accused herein tried to escape after committing the offence only to be apprehended while in the process. Thus he is therefore considered a flight risk.
3. Further, in paragraph 6, thereof, the prosecution urge the court not to release the accused on bond/bail.
4. **Article 49(1)(h)** of the constitution, makes, after all, the offence of murder bailable. This must, however, be balanced against the rights of the victim and the victim's family.
5. The state by, citing flight-risk, is of the view that this one of the compelling reason why the accused should be denied bail.
6. The counsel for the accused states that the reason given by the state is not sufficient cause to deny bail/bond to the accused. I am inclined to think the same that this assertion of flight-risk is not sufficient cause, it may be a cause but not an adequate, not sufficient cause against the overwhelming permissibility that the constitution affords the accused person in respect of bail and upon reasonable conditions.
7. Accordingly, I allow the accused a personal bond of kshs. 1,000,000 with two sureties of similar amount. Thus upon being released on bond, the accused will be required to attend court every 30 days until his case is heard and determined. Any default, the bond shall be cancelled forthwith and the two sureties will be made to account.
8. The next mention date will be 4th of December, 2014.
9. It is so ordered.

Dated and delivered at KISII this 7th day of November, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Omwega holding brief for Okenye for the applicant.

No appearance for the respondent.

Edwin Mongare Court Clerk.