

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 87 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

EVANS RATEMO1ST ACCUSED

CYRUS MAKORI OGERO.....2ND ACCUSED

RULING

1. This is an oral application for bond for the accused persons, Evans Ratemo and Cyrus Makori Ogero. Both accused persons were charged with murder contrary to Section 203 as read with 204 of the Penal Code. They both deny the charge. It is alleged that on 18th July, 2013 at Mwamosioma sublocation, Nyatieko Location in Kisii Central district within Kisii County jointly with others not before the court murdered Nicholas Momanyi. They now seek bond pending the hearing and determination of their case.
2. Bond application is under article 49(1)(h) of the Constitution of Kenya. Those provisions state that every accused person is entitled to bond/bail unless there are compelling reasons to the contrary. The state is entitled to show cause why there are compelling reasons not to give bond. In the instance case the state has not filed its affidavit to give their compelling reasons if any.
3. However, in the absence of this affidavit, the court is seized of pre-bail assessment report in respect of Evans Ratemo only. Cyrus Makori Ogero's report is yet to be made. As a consequence, in the absence of the prosecutor's affidavit for both and absence of pre-bail assessment report for Cyrus Makori Ogero, the court will direct its ruling in respect of Evans Ratemo only.
4. Evans Ratemo is 30 years old. He is married and he is a father of three children. The report – the pre-bond assessment- is not favourable to him. First, no victims family member do not wish that the accused should not be released since they feel that he will most likely interfere with witnesses since he is believed to be a member of a gang that has been terrorizing people in the community. According to the area chief one James Mokaya has been associated with several acts of lawlessness and feels that if he is released on bond his life will be in danger he was so categorical that from the information he was getting from the community members the life of the accused is highly at risk if he released back to society.
5. Accordingly, the court rejects the application to be released on bond for his own good, as harm may come to him. At some future date, the accused could renew the application. It would be looked at on its own merit, after emotions have subsided. As to the other accused person, Cyrus, the court waits the information by the prosecutor and an assessment report.

Ruling dated and delivered at KISII this 16th day of December, 2014

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Okenye not in court for the applicant.

Otieno for the state for the accused

Edwin Mongare Court Clerk.