



**REPUBLIC OF KENYA**

Cases in Magistrate Courts

Criminal Case 35 of 2012

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KENNEDY OCHIENG BONYO alias BROTHE.....ACCUSED.**

**RULING**

The accused person was arraigned in this court on 5.12.2012 charged with murder c/sec 203 as read with S. 204 of the Penal Code.

The particulars of the charge are that on 5.11.2011 at Central Karachuonyo Location, Rachuonyo North District in Homa Bay County, jointly with another before court murdered Thomas Mboya Okeyo.

He pleaded not guilty to the charge and has applied to be released on bond pending the trial.

His advocate, Miss Nekesa, submitted that it was his right under Article 49(1)(h) of the Constitution. She submitted that he was also entitled to be presumed innocent until proved guilty.

The state opposed the application.

According to Miss Valery, Learned State Council if the accused is released, he is likely to interfere with witnesses as the others are still at large.

In reply Miss Nekesa submitted that the accused does not know the whereabouts of the other suspects as he is in custody.

Secondly that nothing has been shown as to how he shall interfere with witnesses. She contended that that assertion is only meant to deny him of his constitutional right. She submitted that he shall abide by the terms set and urged the court to release him on bond.

I have considered the application and the submissions by both sides carefully. Article 49(1) (h) of the Constitution provides that the accused person shall be released on bond on reasonable conditions unless there are compelling reasons not to be released.

For the court to withhold bond it must be satisfied that there are compelling reasons. Here we are told that if released on bond the accused is likely to interfere with witnesses.

The State does not us why it opines that the accused is likely to interfere with witnesses. It has not shown that there is real and reasonable apprehension that he is likely to do so. It is not sufficient to merely assert it, the assertion must be shown to be reasonable. The accused was brought to court in December last year hence 6 months ago and the police must have apprehended those others referred to in Miss

Valery's submissions.

On the whole my finding is that the State has not satisfied the court that there are compelling reasons not to release the accused person.

Accordingly he is granted bond on the following conditions:-

1. ***That he shall execute a bond of Kshs.3 million with 2 substantial sureties of similar amount.***
2. ***That those sureties shall be examined and approved by the Deputy Registrar.***
3. ***That once released, the accused shall not contact or try to in any manner whatsoever attempt to contact any of the witnesses.***
4. ***That he shall during the pendency of his trial attend court for mention once every month the first such mention being on 30.5.2013.***
5. ***Hearing on 18.6.2013.***

Signed and delivered at Homa Bay this...3rd.....day of.....May....2013.

**E.N. MAINA**

**JUDGE.**

In the presence of:

Miss Valary for the Republic

Miss Nekesa for the Accused.

Eudice Okombo Dholuo interpreter.

Accused person.