



## REPUBLIC OF KENYA

### Cases in Magistrate Courts

### Criminal Case 6 of 2013

STATE.....PROSECUTOR.

VERSUS.

HEZRON ODONDI OLOO alias 'JAKOTIENO' .....ACCUSED.

### RULING

The accused person is charged with murder c/sec. 203 as read with S. 204 of the penal code the particulars being that on 15.2.2010 at Kanyango Sub Location in Rachuonyo South District within Homa Bay County jointly with others not before court murdered **CALEB OKETCH ABONG**.

He pleaded not guilty to the charge and has applied to be released on bond/bail pending the trial. He was represented at the bail hearing by Mr. Ongoso Advocate who urged this court to release him on reasonable terms. He submitted that they would abide by any terms that the court may set. He urged the court to be lenient.

Miss Valery for the Republic opposed the application on grounds that the accused and the deceased had a long standing dispute and the accused may face a lot of hostility. She also submitted that there is a likelihood that he shall interfere with witnesses. She contended that the land dispute is still pending in court.

In reply Mr. Ongoso submitted that the state had not shown how the accused is going to interfere with witnesses. That there was no statement or affidavit. Further that the issue of a long standing dispute is mere speculation intended to make the accused to suffer in remand. He termed the submissions by the state hot air and urged the court to grant the accused bond.

Under Article 49(1)(h) of the constitution bail/bond is a right unless there are compelling reasons not to release the accused person. The burden to prove the compelling reasons is on the prosecution. In this case Miss Valery has cited a long standing land dispute between the accused and the deceased, the possibility that the accused may interfere with witnesses and that the accused is likely to be met with hostility as the grounds upon which bail ought to be held it will be noted that none of these grounds have been demonstrated. There is no concrete evidence that the accused shall interfere with witnesses which would be more plausible ground to refuse bail. A compelling reason in my view would be one that is so strong to warrant the court to withhold bail/bond. Miss Valery has not demonstrated a single compelling reason. I did ask for a pre-bail report which was duly received. There is nothing in it that would warrant the court to withhold bail. In the circumstances the accused's application is allowed and he is hereby granted bond on the following terms:-

**a) That he shall execute a bond of Kshs.3 million with 2 substantial sureties of similar amount.**

- b) That the sureties shall be examined and approved by the Deputy Registrar*
- c) Pending the trial he shall attend court once every month.*
- d) Hearing on 27.5.2013.*
- e) Until bond is posted he shall be remanded in custody.*

Signed, dated and delivered this 3rd day of May 2013  
**E.N. MAINA**

**JUGDE**

In Presence of:-

Mr. Osoro holding brief for Nyambati for accused.

Miss Valary for the Republic

Eudice Okombo Dholuo interpreter.

Accused person.