



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NO. 41 OF 2016
REPUBLIC.....PROSECUTOR
VERSUS
G A J.....ACCUSED
R U L I N G

Introduction

1. The accused person herein G A J is before this court on one count of murder having been arraigned in court on 04.07.2016. It is alleged that on the night of 22.06.2016 at [particulars withheld] Village along Khwisero – Kakamega road in Khwisero Sub- County within Kakamega County, he murdered an unknown female African adult. He pleaded not guilty and is awaiting trial. Before the plea was taken in this case, the accused was referred to Mathari Mental Hospital for psychiatric treatment. By a report dated 31.08.2017, the accused was certified fit to stand trial.

The application

2. Meantime the accused has asked the court to release him on bond or bail. After the accused made the applicant for bond, the State asked for a pre-bail report to enable the court make an informed decision on the application.

The Pre-Trial Report

3. The report is dated 19.10.2017. The same shows that the accused is aged 36 years and denies committing the alleged offence. He is a National Youth Service trained mechanical engineering graduate and is also a football coach. He suffers from intermittent mental illness since his primary school days and has been on treatment from 1996. He is a father of four children but no wife. He has four siblings. His mother is alive. When not on treatment, he behaves abnormally by walking around aimlessly and addressing non-existent crowds. He is however not known to be violent. There is no indication from the report as to whether or not the accused abuses alcohol or drugs. The officer who compiled the report, Abisai Kiyunzu recommends bond on the ground that the accused is not a flight risk.

Analysis and Determination

4. Under Article 49(1)(h) of the Constitution of Kenya 2010, an arrested person has the right to be “released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.” Further, Section 123(2) of the Criminal Procedure Code (CPC) also gives the courts discretion to determine the amount of bail “with due regard to the circumstances of the case,” so that such amount “shall” not be excessive.” Under Section 123(3) of the CPC, the court is mandated to require a person seeking bond to avail such number of sureties as may be necessary to secure the applicant’s recognizance.

5. In the instant case, it has been shown that the accused comes from a very humble background and that infact he does not have a house of his own though the family homestead has about eight semi-permanent houses. It is also shown that the accused is well spoken of by the community and that even at his worst during his mental illness he is not violent.

Conclusion

6. For the above reasons and the prosecution having not shown any compelling reasons why bond should not be granted, I will allow the application on the following terms:-

- 1) The accused maybe released on his own bond of kshs.300,000/= (three hundred thousand only) with two sureties of a like amount
- 2) The sureties shall be approved by the Deputy Registrar of this Honourable Court.
- 3) Once released, the accused shall appear in court as and whenever required to do so until the case is heard and determined or until further orders of this Honourable Court.
- 4) The accused shall also report to Khwisero Police Station on the first Monday of every Month until the case is heard and determined or until further orders of this Honourable Court.
- 5) In default of the above, the bond shall be cancelled and the sureties required to make good their guarantee.

Orders accordingly

Ruling delivered dated and signed in open court at Kakamega this 18th day of January, 2018

RUTH N. SITATI

JUDGE

In the presence of;-

.....Mr. Ondieki (present).....for Accused

.....Mr. Jamsumba (present).....for state

.....Polycap Mukabwa.....Court Assistant



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