



REPUBLIC OF KENYA

Cases in Magistrate Courts

Criminal Revision 19 of 2013

STATE.....PROSECUTOR.

VERSUS.

DAVID OKOTH ALEX

DON ODHIAMBO OKETCH.....ACCUSED.

RULING

The accused persons are charged with Murder c/sec 203 as read with S. 204 of the Penal Code. It is alleged that on the night of 12th January, 2013 to 13th January, 2013 at Bombo area in Lake Victoria waters in Mbita District within Homa Bay County jointly with others not before court murdered Rashid Okoth Muok.

Both pleaded not guilty to the charge and have through their Advocate applied to be released on bail/bond pending the trial. Their Advocate urged that they were willing to abide by whatever terms this court may grant.

The application was opposed. Miss Valery for the Republic submitted that the accused persons allegedly committed this offence in the Lake Victoria waters. That the witnesses were fellow fishermen and the state is apprehensive the accused may interfere with witnesses. She contended that this is a small community and they do not want the witnesses to be interfered with.

In reply Miss Nekesa Advocate for the accused persons submitted that the accused persons are innocent until proved guilty. That no real evidence was advanced to substantiate the fear that witnesses will be interfered with. She contended that the accused persons shall abide by all the terms and shall not interfere with witnesses as they too are desirous of a fair hearing and to see that justice is done. She urged the court to grant bond on reasonable terms.

Article 49(1)(h) of the constitution provides that an accused person shall be granted bail/bond unless there are compelling reasons not to release him.

The onus to prove such compelling reasons is always upon the prosecutor. In the instant case the reason cited is the likelihood of the accused persons interfering with witnesses who are fellow fishermen.

In considering whether to release the accused person on bail or bond the main consideration ought to be whether the accused shall turn up for the trial. Of course interference with witnesses cannot be ignored as where it is shown to have occurred bond may be rescinded. Here Miss Valery has not shown that the accused persons have in any way made or tried to make contact with witnesses. In her own words the state is merely apprehensive that this could occur. I did call for pre-bail reports in respect of both accused persons and I have on the record reports by Mr. Samwel Agallo Otieno the Probation Officer Mbita/Suba. He has gone and interviewed the accused's kin and has filed comprehensive reports. In none of the reports is there anything to suggest that accused persons are likely to abscond or that the accused persons have tried to interfere with witnesses. In the event that they meet the conditions set by this court and it is demonstrated that they have made contact or tried to make contact with the witnesses that shall be a good ground to rescind the bond. As it stands I am not convinced that there are compelling reasons not to release the accused persons.

Accordingly I grant bond to both accused persons on the following grounds:-

- 1. That each shall execute a bond of Kshs.3million with 2 substantial sureties of similar amount.**
- 2. The sureties to be examined and approved by the Deputy Registrar.**
- 3. That they are cautioned not to make contact or attempt to make contact with the witnesses in this case.**
- 4. Pending the hearing, they shall attend court for mention once every month.**
- 5. Hearing on 11.6.2013.**

Signed, dated and delivered in open court at Homa Bay this...3rd..... day ofMay.....20

E.N. MAINA

JUDGE.

In presence of:-

Miss Valery for the state.

Miss Nekesa for the accused.

Accused persons

Eudice Okombo Dholuo interpreter.



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