



REPUBLIC OF KENYA

Cases in Magistrate Courts

Criminal Case 26 of 2012

REPUBLIC.....PROSECUTOR

VERSUS

CALVINS OTIENO OKONG'O.....ACCUSED.

RULING

The accused who is charged with murder c/sec 203 as read with S.204 of the Penal Code has formally applied for bond. The application is dated 21.3.2012 and is supported by an affidavit sworn by him on even date.

The application was argued on his behalf by Mr. Osoro Advocate who submitted that he is a young man in his active life and prays for bond to go on with his activities. He argued that bond was also his constitutional right.

Miss Valery, the Learned Advocate for the State opposed the application on the ground that the accused was likely to face hostility from the family of the deceased as they had not reconciled. She submitted that indeed his wife is in hiding due to that hostility.

In reply Mr. Osoro referring to a Probation Officer's report which was however not availed to this court submitted that the accused had no previous record. That the report said his character is good and the fear that is hostile has not been explained and even if it was, the law is there to protect the accused. Further that the allegation that the house was demolished is just a statement from the bar and is not demonstrated. He contended that there is no case where families reconcile when the perpetrator is arrested and even were they to do so the case cannot be withdrawn. He urged this court to allow the application.

I have considered the application carefully. Under Article 49(1)(h) of the Constitution the accused

person is entitled to bond on reasonable conditions unless there are compelling reasons not to release him.

In this case the compelling reason given is the hostility the accused person is likely to face from the family of the deceased should he be released. It will be noted however that as submitted by Mr. Osoro that this is merely a statement from the bar. There is no cogent evidence that there is likely to be so much hostility as would warrant this court to withhold bond for the accused's own safety. Even the allegation that the accused's wife is in hiding is not supported by evidence. If indeed these allegations are true why is there not an affidavit from the investigating officer" The compelling reason ought to be demonstrated.

It is not sufficient to merely allege it. It will also be noted that there is no allegation that the accused person is likely to abscond. Accordingly bond is granted on the following terms.

- a) ***That the accused person shall execute a bond of Kshs.3 million with 2 substantial sureties of similar amount.***
- b) ***The sureties be examined and approved by the Deputy Registrar.***
- c) ***That pending his trial the accused shall attend court for mention once every month the first such mention being on 29.5.2013.***
- d) ***Hearing on 26.6.2013***
- e) ***Until he meets the conditions of bond he shall be remanded in custody.***

E.N. MAINA

JUDGE.

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

E. N. MAINA

JUDGE.

In presence of:

Eudice Okombo Dholuo interpreter.

Miss Valary for the Republic

Miss Nekesa for the Accused.

Accused persons.



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