



REPUBLIC OF KENYA

Cases in Magistrate Courts

Criminal Case 34 of 2013

REPUBLIC.....PROSECUTOR

VERSUS

NELSON OTIENO ODIRA &

CHIEFSON OLUOCH ODIRA.....ACCUSED.

RULING

The 2 accused persons herein are charged with murder c/sec 203 as read with S. 204 of the Penal Code.

It is alleged that on 3.3.2013 at North Sakwa Location, Migori county jointly with another before court they murdered **Benard Odicho Livinje**.

Both pleaded not guilty to the charge and have applied to be released on bond pending their trial. Mr. Osoro their Advocate submitted that they are young people in their active age and they are willing to abide by whatever terms this court will set. He prayed for reasonable terms.

The State opposed the application on the ground that the father of the accused persons who is a suspect with them is yet to be apprehended and should they be released they are likely to interfere with investigations.

Mr. Osoro however submitted that that is no good reason to withhold bond. That nobody should carry another's burden and further that there is nothing to show that the prosecution has not completed its investigations.

Article 49(1)(h) of the Constitution now guarantees an accused person bond/bail on reasonable conditions unless there are compelling reasons not to release them. So is the fact that one of the suspects is still at large as is alleged a compelling reason. My finding is that in the circumstances of this case it is not. The record shows that the accused persons were arrested on 9.3.2013. There is nothing to show what has been done so far to bring all the suspects to book.

Moreover it is upon the police to arrest the suspect and the accused persons have nothing to do with it. In my view that reason alone would not warrant this court to withhold bond.

The main consideration always is that the accused persons shall turn up for their trial. I did not hear the State Counsel state that they shall not.

Accordingly I allow their application for bond on the following conditions:-

- a) That the accused persons shall execute a bond of Kshs.3 million shillings each and furnish the court with 2 substantial sureties of similar amount.**
- b) The sureties to be approved by the Deputy Registrar.**
- c) Upon being released the accused persons shall not make contact or attempt to make contact with any of the witnesses.**
- d) They shall pending the trial attend court for mention once every month.**
- e) Hearing on 16.5.2013.**
- f) In the meantime they shall be remanded in custody.**

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

Mr. Osoro for the Accused.

Accused persons.



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