



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 28 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

SAMMY NYAMWEYA NYABOGA.....1ST ACCUSED

ALICE MORAA OMWEGA.....2ND ACCUSED

RULING

Sammy Nyamweya Nyaboga and Alice Moraa Omwega face a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. They applied to be released on bond before J. Emukule who was then seized of this matter. In a ruling dated 24/5/2013 the application was declined and the court ordered that the case be heard on priority basis for reasons inter alia, that the witnesses in the case were 2nd accused's son and niece.

Counsel for the accused persons have made another application for bond for reasons that the bond was declined for fear of interference with witnesses but the said witnesses have now testified. Mr. Akango added that regarding the security of the accused persons, it is 3 months after the alleged murder and they are unlikely to be harmed if released.

Cpl. Elijah Njeru swore a further affidavit dated 22/7/2013 in which he depones that the 1st accused was a tenant of the deceased, he has no permanent employment, his home is unknown and is likely to abscond. As regards the 2nd accused, he deponed that she lived with the deceased in the home where the offence was committed, she is unlikely to go back there due to hostility of the community, she is unemployed and likely to abscond. The officer also deponed that there still exists animosity between the family of the 2nd accused and the deceased's family.

The applicants have not sworn any further affidavit and nothing new has arisen since J Emukule delivered his ruling. The applicants are relying on the same affidavits which the judge considered in his ruling. The court considered the issue of likelihood of interference with the witnesses. The son and niece of the 2nd accused have indeed testified but that was not the only ground upon which bond was declined.

The court also considered the fact that there was no evidence that 1st accused owns a barber shop or that he operates a taxi or operates a motor cycle business. Further, the court considered the fact that there was no evidence of 2nd accused's MPESA business and the court found the affidavits to be inadequate. One of the key considerations in such an application is that accused persons will turn up for trial. The court was not satisfied with the affidavits filed by the applicants' counsel. The court also took into account the issue of the applicants' security. No new grounds have been adduced.

This court is not being called upon to review J Emukule's ruling and the judge in declining to grant bail ordered that the case be heard on priority basis and indeed the accused persons have been accorded a priority hearing. They were charged in March this year. Already evidence of five witnesses has been taken and the matter comes up for further hearing on 11/11/2013. Taking into account that cases of 2008 are still pending, this case has been heard speedily. No ground has been adduced to warrant this court reviewing the earlier ruling on bail and the same is declined.

DATED and DELIVERED this 4th day of October, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Kabita holding for the accused

Mr. Omutelema for the State

Kennedy - Court Assistant



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