



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 20 OF 2013

REPUBLIC PROSECUTOR

VERSUS

JOHN ONDABU NYARORI ACCUSED

RULING

1. By the Notice of Motion dated 11th June 2013, the accused herein prays to be released on bond pending the hearing and determination of this case. The application is brought under the provisions of **Article 49 (1) (h)** of the **Constitution of Kenya 2010**. The article provides:-

“49 (1) An arrested person has the right –

a. -----

i. -----

ii. -----

iii. -----

b. -----

c. -----

d. -----

e. -----

f. -----

i. -----

ii. -----

g. -----

- h. **to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.**

2. The grounds in supporting of the application are set out on the face and are also contained in the applicant’s support affidavit sworn on 11th June 2013. In brief the accused avers that apart from the fact that he has a Constitutional right to be released on bond pending trial, there is also a possibility that his case will not be heard as expeditiously as it should because of a congested diary for criminal cases. He prays that the application for bond be allowed so that he can go back home to his young family which now has to fend for itself and is lacking in care and counseling.
3. The state filed an affidavit sworn by Number 92233 PC Joel Macharia on 11th October 2013. At

- paragraph 3 thereof, the deponent avers that there are no compelling reasons to have the accused person denied bail which is his right as provided in the Constitution.
4. Briefly the accused herein, John Ondabu Nyaruri was arraigned before court on 1st March 2013 on one count of murder contrary to **section 203** as read with **section 204** of the **Penal Code**, the particulars being that on the 27th day of February 2013 at Nyamware village, Emenwa sub location in Nyamache District within Kisii County, he murdered Joseph Oenga Nyaruri. He pleaded not guilty and is awaiting trial. Because of pending murder cases filed in 2012, this case has yet to be given a hearing date.
 5. The court has now considered the application against the backdrop of the Constitutional provisions and the submissions by both counsel appearing. In an application of this nature, the paramount consideration by the court is whether the accused person, if released on bond, will avail himself as and when required by the court during the pendency of his trial. See **Gatabaki –vs- Republic [1993] KLR 327**. Other factors to be taken into account include, but are not limited to, the safety of an accused person once he is released on bond, public security safety and the overall interest of the wider public, the nature of the charge and the gravity of the punishment in the event of conviction; the strength of the evidence which supports the charge and the likelihood of the accused interfering with witnesses or suppressing evidence that may incriminate him.
 6. I wish to note that at this point in time, the court does not have access to the evidence which supports the charge against the accused; but the court is aware that if the accused person is eventually tried and found guilty and convicted the prescribed sentence upon conviction is one of death. This court is also not in possession of a Bail Assessment Report, though the same requested for but for one reason or another, the Report has not been furnished to the court. That notwithstanding, the court notes that the application for bond is not opposed. What remains for the court to do is to impose such terms as would ensure that the accused presents himself to the court during the pendency of his trial if he is released on bond.
 7. Accordingly, the Notice of Motion dated 11th June 2013 and filed in court on 17th June 2013 is hereby allowed on the following terms:-
 1. *The accused may be released on his own bond of Kshs.3,000,000/= with 2 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 for mention of his case once every thirty (30) days until the case is heard and determined or until further orders of this Honourable Court.*
 4. *Any default in appearance without just cause shall lead to cancellation of the bond and calling upon the sureties to make good their guarantee.*
 5. *Mention on 17/01/2014.*
 8. Orders accordingly.

Dated and delivered at Kisii this 19th day of December, 2013

R.N. SITATI

JUDGE.

In the presence of:

Mr. Shabola (present) for State

Mr. Aoga (present) for accused

Mr. Bibu - Court Clerk