



REPUBLIC OF KENYA

Cases in Magistrate Courts

Criminal Revision 22 of 2012

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH OTIENO OGERE.....ACCUSED.

RULING

The accused who is charged with murder c/sec. 203 as read with S. 204 of the Penal Code has applied to be released on bond pending the trial.

His Advocate Mr. Osoro urged the court to release him on reasonable terms.

Miss Valery the Learned State Counsel opposed the application on two grounds, viz:-

(a) That the accused person was arrested by members of the public who assaulted him before he was rescued by the police, that if released on bond he may be harmed by the mob.

(b) That he may be tempted to abscond for fear of the mob.

To this Mr. Osoro's response was that the police are abdicating their duty of protecting the public including the accused. That it is the accused's constitutional right to be released on bond and he ought to be so released.

I have considered the application and the rival submissions carefully. The accused is indeed entitled to be released on bond on reasonable conditions unless there are compelling reasons not to release him.

The onus to prove those compelling reasons lies on the State. Miss Valery has asserted 2 grounds but the same are merely statements from the bar as they are not backed by evidence. When the accused person first applied for bond on 18.2.2013 Mr. Mutuku Assistant Director for Public Prosecutions, then representing the State applied for time to file an affidavit. By the time this application was heard, a month later, no affidavit was filed. What does that say? That the State may not have any compelling reason that would warrant this court to withhold bond.

Accordingly bond is granted to the accused on the following conditions:-

- 1. That he shall execute a bond of Kshs. 3 million with 2 substantial sureties of similar amount.***
- 2. That the sureties shall be examined by the Deputy Registrar.***
- 3. That pending the trial the accused person shall attend court for mention of his case once every month first such mention being on 30.5.2013.***
- 4. Hearing on 20.6.2013***

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

E.N. MAINA
JUDGE.

In the presence of:
Eudice Okombo Dholuo interpreter.
Miss Valary for the Republic
Mr. Osoro for the Accused.
Accused person.