



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 132 OF 2012

REPUBLIC.....APPLICANT

VERSUS

JOHN OKEROSI OBURE alias MASTER.....ACCUSED

RULING

1. This is an oral application for bond by one **John Okerosi Obure**. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal code. He denies the charge. It is alleged that on the night of 17th October, 2012 at Bongera village sublocation in Kisii district within Kisii County in the Republic of Kenya murdered Grace Nyambeki. He now asks this court to release him on bond pending the hearing and determination of this case.
2. Article 49 (1)(h) of the Constitutions gives every person a right to be released on bond until and unless there are compelling reasons not to grant bond. It is the prosecutor to indicate, in an affidavit, that there are such compelling reasons to deny bond.
3. In the instance case, the prosecution has filed a replying affidavit dated 18th November, 2014 in which they have advanced three reasons why bond should be denied:
 1. *That the accused will be in contact with the witnesses 3 of whom are minors and his children. That the accused will interfere with evidence to be tendered against him leading to miscarriage of justice.*
 2. *That if released on bond his own life will be in danger as the situation on the ground is volatile and members of the community in which the crime of murder was committed are baying for his blood in reprisal for the act he committed. His own house was razed down by angry members of the public.*
 3. *In view of the severity of the sentence and all the above circumstances taken into consideration, the temptation to abscond or go into hiding if released on bail pending trial is real.*
4. The counsel for the accused opposed the stand advanced by the prosecution that there are compelling reasons to deny the accused bond. The accused asserts that:
 1. *The situation on the ground has cooled down and*
 2. *There is no evidence that the three to potential witnesses are the accused's children.*
 3. *That the accused person is presumed innocent, as such as a right to be released on bond as he is presumed innocent. That it is a responsibility of the state that once released, the accused, he should not interfere with witnesses. And that the state has resources to take case of this aspect.*

4. *That the sureties will compel attendance of the accused to court.*
5. The court is inclined towards granting of bond to the accused despite the stand taken by the prosecution.
6. Accordingly and for the reasons advanced by the defence, the court will release the accused person on personal bond of kshs. 1,000,000 with two sureties of similar amount the same to be approved by the Deputy Registrar of the High Court.
7. Upon his release the accused is compelled to attend court every month until the completion of the hearing and determination of his case. The first attendance will be on 20th March, 2015.
8. Any default, the bond will be cancelled forthwith and sureties made to account.
9. It is so ordered.

Dated and delivered at **KISII** this 20th day of February, 2015.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Otieno for the applicant

Moseti for the accused

Edwin Mongare Court Clerk.