



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 23 OF 2014

ENOCK NYABUTO ONGEO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is an oral application for bond by Enock Nyabuto Ongeo. He is the one of the four accused persons. Accused persons are charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on diverse dates of between 18th and 19th January, 2014 at Gesabakwa village, Onywere sub-location in Marani district within Kisii County, jointly murdered Asuma Menge. They all deny the charge. And they would want to be released on bond pending the hearing and determination of their case.

2. Bond/bail is a constitutional right under article 49(1)(h) of the Constitution unless there are compelling reasons to deny that right.

3. The state/prosecution must file an affidavit if they think the accused should not be released on bond. The state, in this case, has not filed a response to that application by this accused for bond. No objection was raised when the application was being made.

4. However, in the court file, there are two further pre-bail assessment report on two accused persons,

a) Enock Nyabuto Ongeo and (b) John Onchwari.

Enock Nyabuto Ongeo is a male aged 22 years. According to the social inquiry carried out it has been established that Enock has previous criminal records. The community talks negatively about him, from the information they could lynch him if released. He has a criminal record vide No. Criminal case No. 521 of 2012 for the offence of possessing alcohol. And he was a person mentioned by the deceased as one who committed the offence.

5. Accordingly, the application for bond is hereby denied; it is denied for his own safety as being released, he is likely to be lynched by the community.

6. It is so ordered.

Dated and delivered at KISII this 16th day of February, 2015

C.B.NAGILLAH,

JUDGE.

In the presence of:

Okenye for the applicant

Otieno for the respondent

Edwin Mongare Court Clerk.