



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO. 111 OF 2014**

**REPUBLIC.....APPLICANT**

**VERSUS**

**SAMUEL OMUNDI MACHONI.....ACCUSED**

**RULING**

1. On 19<sup>th</sup> December, 2014 the accused person, Samwel Omundi Machoni applied to be released on bond pending the hearing and determination of his case. Three times the state has sought further time within which to show cause why bond should not or should be granted to the accused person. Even todate, the state has yet to respond on the issue of bond.
2. The accused is charged with murder contrary to section 203 as read with section 203 of the penal code. It is alleged that on the 26<sup>th</sup> day of November, 2014, at Botabori village in Sensi sublocation in Marani District within Kisii County in the Republic of Kenya, murdered **ATEKA BARONGO**. He denies this charge and he now applies for bond pending the hearing and determination of his case.
3. It is enshrined in the constitution that an accused person is entitled to be released on bond: Article 49(1)(h) this right is guaranteed. However, although guaranteed, it is not absolute right. It is subject to compelling reasons not being shown. It is, usually, incumbent upon the prosecution, if any, to state the reasons that circumscribes this constitutional right. Todate the prosecution has not given their reasons despite ample time afforded by the court.
4. In the absence of their response, the court is still empowered to rule in one way or another and give its direction relating to this application.
5. In the absence of all else, this court is inclined in favour of the applicant, to grant bond to the said applicant.
6. Accordingly, the accused is hereby granted a personal bond of kshs. 500,000 plus one surety of similar amount, the same to be approved by the Deputy Registrar of the High Court.
7. Upon his release the accused will be expected to attend court for mentions of his case every month until the hearing and determination of his case or further court orders. Such first attendance to be on 24<sup>th</sup> of April, 2015.
8. Any one default, the bond will be cancelled forthwith and the surety made to account.
9. It is so ordered.

Dated and delivered at KISII this 27<sup>th</sup> day of March, 2015

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:**

Ogari for the applicant

Clara for the respondent

Edwin Mongare Court Clerk.