



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 108 OF 2013**

REPUBLIC.....PROSECUTOR

**VERSUS**

EVANS MOGA ANARIKO alias SUPER .....1<sup>ST</sup> ACCUSED

KEPHA BISASE SALEMU.....2<sup>ND</sup> ACCUSED

**RULING**

1. This is an application for bond by; 1, Kepha Bisase Salemu alias Zacharia 2, Evans Mogaka Anariko alias SUPER, being represented by C.A. Okenye advocate. The two were charged with murder, contrary to section 203 as read with 204 of the Penal code. The particulars thereof are that on the 24<sup>th</sup> day of January, 2012 at Kerema village in Nyamira District within Nyamira county in the Republic of Kenya, jointly with another before court murdered **JOASH MONYENYE MESA**. They denied the charge and the court entered a plea of NOT GUILTY. They now apply for bond pending the determination of their case.
2. The accused persons are aware of their right to bond/bail being a constitutional one. However, be that as it may, that right is not absolute one. It is circumscribed if there are compelling reasons to deny them bond.
3. **Evans Mogaka Anariko- 1<sup>st</sup> accused person.**

In the affidavit sworn on 16<sup>th</sup> day of December, 2014. The deponent of that affidavit states in paragraphs 3, 4, 5 and 6 thereof that the second accused person i.e. Evans Mogaka Anariko alias SUPER that he is likely to abscond as it took a very long time and efforts to trace and apprehend him- about one year. Further, the 2<sup>nd</sup> accused is likely to tamper with the witnesses if released.

4. The pre-bail assessment report on the 2<sup>nd</sup> accused filed on 23<sup>rd</sup> February, 2015, however appears positive on the 2<sup>nd</sup> accused person. Some of the community members, being contacted indicated their willingness to accept him if granted bond. The victim's family however, were not willing to support the issue of bond to the 2<sup>nd</sup> accused person.
5. The court has to balance between the rights accorded the accused person and the rights of the victims. Subject to that balance, the court for sufficient cause, will take the direction it thinks is right in the circumstances.
6. Accordingly, the court will deny bond to the 2<sup>nd</sup> accused in the light of reasons above stated. He is a liberty to re-apply at some later stage, the court will consider the reviewed application with an open mind.

7. On **Kepha Bisase Salemu**, there are compelling reasons to deny bond. The affidavit earlier referred to, is reticent on the 1<sup>st</sup> accused person. The pre-bail assessment report is equally positive about him, at any rate, it is not negative on him being released on bond.
8. Accordingly, this court grants the 2<sup>nd</sup> accused bond and he is therefore released on personal bond of kshs. 1,000,000 with two sureties of the same amount, the same to be approved by the Deputy Registrar of this court.
9. Upon his release, he will be expected to attend court for mention of his case after 30 days until the determination of his case or further court orders. The first such mention to be on 29<sup>th</sup> June, 2015. Any one default, the bond shall be cancelled forthwith and sureties made to account.
10. It is so ordered.

Dated and delivered at Kisii this 12<sup>th</sup> day of June 2015.

**HON. C.B. NAGILLAH**

**JUDGE**

**In the presence of:-**

Sagwe holding brief for Otenye for the applicants.

Mbelete for the respondent

Samuel Omuga - Court Clerk.