



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CRIMINAL CASE NO.12 OF 2015**

**REPUBLIC**  
**VERSUS**  
**DANIEL CHUMBI NYABUTI.....ACCUSED**

**RULING**

1. This is an application for bond by one **Daniel Chumbi Nyaburi** who was charged for murder. The particulars thereof are that on unknown dates between the 7<sup>th</sup> February 2015 and 20<sup>th</sup> Marc 2015 at Enjoro sub-location in Nyamira District within Nyamira County murdered Faith Nyanchama Omwenga.

He denies the charge. He however, asks to be released on bond pending the hearing and determination of his case.

2. The right to bond is a constitutional right accorded by the Constitution of Kenya under **Article 49 (1) (h)**:

*“An arrested person has a right (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”*

a. The State has filed its replying affidavit sworn by No.84118 Sgt. James Akello of Divisional CID Headquarters, Nyamira. He avers that:

**i. The situation on the ground is still volatile, if the accused is released on bond, his own safety would be compromised. The villagers are still angry at the applicant and have vowed to lynch him.**

**ii. That villagers have already destroyed by burning, every home in the accused persons homestead including that of all his family members and each and every one of his family members has been forced to relocate to unknown locations. The accused will therefore not have a fixed place of abode if granted bond.**

**iii. That the applicant is also a flight risk because he was arrest trying to escape to an unknown destination. If released on bond; the accused will likely flee the jurisdiction of this court.**

6. Additionally another affidavit by No.57666 CPL.Hilary Maiyo of the same division CID Nyamira also filed his affidavit. On the same date and reiterates his, colleague’s assertion that releasing the accused is

not good for his own safety as on the ground is still volatile. This affidavit complements the earlier affidavit in its refusal to release the accused person.

3. Therefore, there appears to be compelling reasons why the accused person should be denied bond as stated above.

4. Therefore his application be and is hereby denied. He may re-apply at some future time, if volatility as subsided. The court will consider the matter with an open mind.

5. It is so ordered.

**Dated, signed and delivered in open court this 31<sup>st</sup> day of July 2015**

**HON. C. B. NAGILLAH**

**JUDGE**

**In the presence of:**

- Mrs. Sapele for the State
- M/S Momanyi holding brief for M/S Okonye for Accused
- Samuel Omuga: court clerk