



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.11 OF 2015

REPUBLIC

VERSUS

JOASH MARUBE BICHANGA - ACCUSED

RULING

1. This is an oral application for the accused person to be released on bond pending the hearing and determination of his/her case.
2. The accused person is charged for murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence are as follows: On the night of 19th day of March 2015 at Tondori village in Masaba North sub-county, within Nyamira County jointly with others not before court murdered **Azenath Kerubo Kenya**.
3. The right to bond/bail is a constitutional right as envisaged by the Constitution. **Article 49(1)** says: *“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 their affidavit, on 27th July 2015 sworn by No.83490 CPL. Vincent Chepkonga giving compelling reasons why the State has objection to the release of the accused person on bond. The salient reasons are:
 - i. **The accused will be in contact with the witnesses. One eye witness, D B M, a minor is likely to be interfered with.**
 - ii. **Due to severity of the sentence, temptation to abscond or go into hiding is very probable.**
 - iii. **I have information, believed to be true, the family of the accused intend to relocate him to an area outside the jurisdiction of this court should him be released on bond.**
 - b. In the pre-bail assessment report filed on 22nd June 2015. From the report, it appears that the release of the accused person on bond may endanger the lives of the witnesses and his own life. The master of ceremony during funeral expense drive was killed in unclear circumstances, raising fears that all is not well should the accused person be released on bond. Tensions are high, especially from the victim’s family as this was a double murder of a wife and daughter.
4. As the accused person has a constitutional protection, the victim’s family also has a constitutional protection. It is therefore incumbent upon the court to balance the rights of the accused persons

and the rights of the victim family in the issuance of the bond/bail to the accused person.

5. This court, accordingly will not release the accused person on bond. This application is hereby denied. The accused is at liberty to review his application after a year or so.
6. It is so ordered.

Dated, signed and delivered in open court at Kisii this 31st day of July 2015

HON. C. B. NAGILLAH

JUDGE

In the presence of:

- Sepele for State
- M/S Sagwe holding brief for M/S Miencha for Accused
- Samuel Omuga: court clerk