



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CRIMINAL CASE NO.3 OF 2015

REPUBLIC

VERSUS

KODEK OTETE	-	1ST ACCUSED
DOMINIC LUKAS MATAGARO	-	2ND ACCUSED
JOSHUA ELIJAH MSIMA	-	3RD ACCUSED

RULING

1. This is the application dated 9th February 2015.
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 15th day of January 2015 at Gakero Sub-location in Gucha Sub-County within Kisii County in the Republic of Kenya, jointly with others not before court murdered MAURINE NYANCHAMA OBADIA.*
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. Fortunately the prosecution has no compelling reasons why the accused person should not be released on bond.
 - b. Unfortunately, the court does not have advantage of the pre-bail assessment report to guide the issue of bond/bail.
4. As the accused person has a constitutional protection, the victim’s family also have 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. In the light of the State’s submission above and in the light of the pre-bail assessment report above referred to, this court, bearing in mind the Constitutional rights of all the parties and the need for the accused person to attend court at his trial, this court, accordingly, will release the accused person on a personal bond in terms following:
 - i. **A personal bond of Ksh.1,000,000/= with two sureties of similar amount. The same be approved by the Deputy Registrar of this court, on conditions that**

ii. **He attends court every month for mention of his case until the hearing and disposal of his case or until further court orders**

iii. **The first such mentioned to be on 31st August 2015**

iv. **Any one default, the bond will be immediately cancelled and the sureties made to account.**

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 Moseki holding brief for M/S Kaburi for Accused
- Samuel Omuga: court clerk