



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO.18 OF 2015**

**REPUBLIC**

**VERSUS**

**HESBORN OMANGA.....ACCUSED**

**RULING**

1. The accused person **HESBORN OMANGA** is charged with the offence of **murder contrary to Section 203 as read with Section 204 of the Penal Code.**

It is alleged that on 16<sup>th</sup> April 2015 at Gomba village, Mosochi Division in Kisii Central District within Kisii County, murdered **IRENE NYAMARE.**

2. On 17<sup>th</sup> June 2015, Mr. Nyagwencha, counsel then appearing for the accused person, applied for his release on bond pending his trial thereby prompting the court to call for a pre-bail assessment report from the Probation Officer.

3. The State counsel did not give any response to the application for bail despite having sought time to do so.

4. The Probation Officer filed a pre-bail report dated 14<sup>th</sup> July 2015 which report was not favourable to the accused as it stated that the members of the accused's community were still hostile to him and there is fear that he could be lynched if he is released on bond.

5. The right of an accused person to be released on bond pending trial is provided for under **Article 49 (1) (h)** of the **Constitution** which states:

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

**Article 49 (1) (h)** fortifies the principle that an accused person is innocent until proven guilty irrespective of the charges that he may be facing. That being the case, the main concern of the court in considering an application for bail/bond should be whether the accused person will avail himself for hearing of the case once released on bond.

6. In the instant case, the pre-bail report reveals that the accused person's own immediate family members are reluctant to have him back at home just yet since the possibility of him being lynched by members of the public is still imminent. Under those hostile home environment circumstances, it cannot be gainsaid

that the accused person is a flight risk.

7. I have carefully considered the law and the circumstances surrounding this case and find that they dictate against an order for bail/bond. The accused is likely to jump bail due to the hostility back at home.

8. In the premises and for the reasons stated above, the accused's application for bail/bond pending trial is disallowed, but with a rider that the accused is free to renew his application for bond at a later date when tempers on the ground may have cooled down.

9. I shall proceed and fix the matter for mention in the registry on **26<sup>th</sup> November, 2015** for purposes of fixing a hearing date, or for possibility of plea bargain agreement.

10. It is so ordered.

**Dated, signed and delivered in open court this 30<sup>th</sup> day of October, 2015**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

Boyoni for the State

Accused

Omuga: court clerk