



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.102 OF 2012

REPUBLIC - - - - PROSECUTOR

VERSUS

MARGARET KUKUTIE NAIRENGE - ACCUSED

RULING

1. The accused person herein **MARGARET KUKUTIE NAIRENGE**, faces the charge of **Murder contrary to Section 203** as read with **Section 204** of the **Penal Code**.
2. On 5th October 2015, the accused person renewed her application to be released on bond pending her trial after her initial application for bond was disallowed by court in a ruling made on 8th October 2014.
3. In the earlier ruling, the presiding Judge, while rejecting the application for bond observed as follows:-

“I deny bond to the accused for now and urge the defence counsel to re-apply for accused when tempers have cooled down and emotions subsided. The court will in its discretion, reconsider the application, most likely positively in favour of the accused. This refusal should not be taken negatively, it is largely perhaps for the interest of the accused person.”
4. At the time the accused’s earlier application for bond was rejected the Probation Officer’s report indicated that the situation in the accused’s person’s marital home, where the alleged offence was committed, was still volatile and the accused was in danger of being lynched by members of the public if she was released on bond.
5. There was also fear that the accused could interfere with witnesses especially her own child, was alleged to be a crucial witness to the crime.
6. At the time the accused, renewed her application for bond, Mr. Majale, counsel for the State submitted that he did not have any new compelling grounds for denying the accused bond save for the ones contained in the earlier affidavit filed on 14th May 2014 in respect to the first application for bond that had been dispensed with.
7. In view of the above and taking into account the fact that it is now one year since the accused was denied bail with a rider that she could apply after the tempers have cooled down, I find that this current application is timely and meritorious.
8. The offence in question is alleged to have been committed on the night of 24th/25th July 2012. It is now more than 3 years since the incident took place.

9. By any standards, tempers on the ground should have cooled by now. In any event, the prosecution has not furnished any evidence before the court to show that tempers are still high.

10. **PW1, the witness** the prosecution feared would be interfered with has already testified and there is currently no objection by the prosecution on the possibility of the accused interfering with any witnesses.

11. The right to bond pending trial is enshrined in **Article 49 (1) (h)** of the **Constitution**.

12. In view of the above, the application for bond is allowed on the following terms:-

1) The accused may be released upon executing her own bond of Ksh.500,000/= (Five hundred thousand) with 2 sureties of a similar amount.

2) The sureties shall be approved by the Deputy Registrar of this Honourable Court.

3) Once she is released, the accused person should for her own security not go or venture back to her matrimonial home and she is directed to go back to her parent's home.

4) Once released, the accused shall appear for mention of her case once every 30 days until the case is heard and determined or until further orders of this court.

5) If the accused fails to appear at any one mention, the bond shall be cancelled and the sureties called upon to account and/or make good their bond.

6) Mention on 16th December 2015.

7) Accused remanded in custody.

Dated, signed and delivered in open Court this 16th day of November, 2015

HON. W. OKWANY

JUDGE

In the presence of:

- Otieno for the State
- N/A for the Accused
- Ogega: Court clerk