



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO.20 OF 2013**  
**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**JOHN ONDABU NYARORI.....ACCUSED**

**RULING**

1. The accused herein, **JOHN ONDABU NYARORI** was arraigned in this court on 1<sup>st</sup> March 2013 on one count of **Murder** contrary to **Section 203** as read with **Section 204 of the Penal Code**.

The particulars of the charge are that on 27<sup>th</sup> February 2013 at Nyamware village Emeriwa Sub-Location in Nyamache District within Kisii County, murdered Josph Oenga Nyarari.

2. The accused pleaded not guilty and is awaiting trial.

3. By an order of this court (*though differently constituted*) made on 19<sup>th</sup> December 2013 the accused was granted bond on inter alia, the following terms:

**“1) The accused may be released on his own bond of Ksh.3,000,000/= with 2 sureties of a like amount.”**

4. The accused has not met the above stated bond terms to-date and by an oral application made on 21<sup>st</sup> October 2015, the accused seeks a review of the said bond terms on the ground that he is unable to raise the 2 sureties who can each afford or avail security to court worth Ksh.3,000,000/=.

5. The accused’s application for review of bond terms was not opposed by the State.

6. I have carefully considered the accused’s application for review of the bond terms. I note that **Article 49 (1) (h)** provides that:

**“An arrested person has a 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.”**

7. On the same subject and under similar circumstances Ochieng J, in **High Court Misc. Criminal Application No.171 of 2012 at Nairobi** stated as follows:

**“On the other hand, it is also important that the court should not impose such easy conditions that the accused person would not have any difficulty in meeting the same. If conditions were very lenient, an accused person may be tempted to abscond, because he would not feel the**

**pain of abandoning the bail, or the security deposited in court. It is therefore important that the court in determining an application for bail pending trial should conduct a delicate balancing act, so as to get reasonable conditions for a particular case at hand.”**

8. I totally concur with the reasoning of the Honourable Judge, that bond terms should not be so easy that it may tempt an accused person to abscond and while the terms should be reasonable, must at the same time not be excessive.

9. The charge that the accused person faces is a capital charge which carries a death sentence.

10. In the same breath, the accused person is under the law, deemed innocent until proven guilty.

11. I am satisfied that the court was guided by several crucial factors when considering the initial application for bond. However, in view of the fact that the accused has not been able to meet the bond terms almost two years down the line since the bond was initially granted is a testimony that the accused is totally unable to secure the requisite sureties therefore making the instant application necessary.

12. While I am convinced that the earlier bond terms were neither unreasonable nor excessive, I will give due consideration to the accused's plea for a reduction of the amount the 2 sureties should raise to a lower figure.

13. In the end, the application for review is hereby allowed on the following terms:-

**1) That the applicant shall be released upon executing his own bond of Ksh.3,000,000/= (three million) with two sureties of Ksh.1,000,000/= (one million) each.**

**2) The other conditions set by the court in the ruling delivered on 19<sup>th</sup> December 2013 are hereby retained and will remain applicable.**

14. It is so ordered.

**Dated, signed and delivered in open court this 17<sup>th</sup> day of November, 2015**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Mr. Mbelete for the State
- M/S Aoga for the Accused
- Mr. Ogega: court clerk