



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT BUNGOMA**  
**CRIMINAL CASE NO.24 OF 2014**

REPUBLIC.....PROSECUTOR

VRS

RASTO WANYAMA MASINDE

*alias* DAVID ALUKOYE CHESOLI.....1ST ACCUSED

GEORGE SIMIYU NABIKOTO

*alias* SAITOTI.....2ND ACCUSED

**RULING**

1. The accused, Rasto Wanyama Masinde *alias* David Alukoye Chesoli and George Simiyu Nabikoto *alias* Saitoti are charged with four (4) counts of murder. They have applied for bond. The State has however, opposed that application on the ground that the security of the accused is not assured as members of the public are agitated; that the 1<sup>st</sup> accused has a tendency of jumping bail; that he had been charged in BGM CM CR. Case No.1465 of 2013 wherein after being released he jumped bail. Finally, Mr. Kibellion for the State submitted that the two accused have no known permanent residence and that the 1<sup>st</sup> accused had disappeared after the offences in this Case were committed and was arrested living in a bush in Webuye. In his view, these are compelling reasons which warrant the denial of bond to the two. The defence left the issue to the court to decide in the face of the allegations by the State.

2. Article 49 (1) (h) of the Constitution of Kenya provides that:

***“49. (1) An arrested person has the 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.”***

3. From the foregoing, it is clear that bail for an accused person during his trial is a Constitutional right which can only be curtailed if there are compelling reasons. The Constitution has not given what those compelling reasons are. These in my view, can only be deduced from the very purpose for which the right to bail exist. Bail or bond enables an accused person to secure his liberty and continue with his normal life in society or the community in which he lives during the pendency of his trial. Bail or bond is therefore meant to secure the accuseds attendance during the trial.

4. In this regard, any reason or circumstance that may affect the attendance of the accused at his trial may, in my view, be termed as a compelling reason. Some of these may be; the disappearance of the accused; personal security or health of the accused; the likelihood of interference with the administration of justice such as influencing the witnesses. Others may be, the personal conduct of an accused such as where one is a habitual offender or where an accused has previously broken his bond terms or jumped bail. I hold this view because while exercising its judicial authority, a court has always to weigh between the rights of the accused and the public interest. In serious offences, it is good practice to order or seek social inquiry on the accused before arriving at a well balanced decision.

5. In this Case, the bail assessment and social inquiry reports dated 23<sup>rd</sup> July, 2014 show that the 1<sup>st</sup>

accused changed his residence from Wakelekha villageto Webuye upon being suspected with the commission of the offences charged. The community is hostile because of the nature of the offences and the circumstances in which the same are alleged to have been committed. The report shows that the victims were members of the same family. This might be the reason for the hostility by the community.

6. Further to the foregoing, I have also considered the fact that the submission by Mr. Kibellion that the first accused has hitherto jumped bail. I am of the view that the personal security of the accused persons, the allegation of previous failure to adhere to bond terms and the likelihood of the accused not turning up for their trial due to the serious offences facing them, are compelling reasons which disentitle the accused to bond.

7. Accordingly, the application for bond is hereby declined. The accused persons are to remain in custody during trial.

**DATED and DELIVERED at Bungoma this 23<sup>rd</sup> day of July, 2014.**

**A. MABEYA**

**JUDGE**