



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CRIMINAL MURDER NOS.14 AND 22 OF 2014**  
**(CONSOLIDATED)**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ENOCK NYANDIEKA BEBENI**

**GEOFFREY BIRUNDU MONARI.....ACCUSED**

**RULING**

1. By the consolidated information dated 25<sup>th</sup> February 2014, the two accused persons herein, Enock Nyandieka Bebeni and Geoffrey Birundu Monari are charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that “On the 20<sup>th</sup> day of January 2014 at Nyacheki Market in Nyamache District within Kisii County in the Republic of Kenya, jointly murdered Dennis Ogechi Mogata. They denied the charge and are awaiting trial.
2. In the meantime, they have mounted an application in which they seek to be released on bond pending trial pursuant to the provisions of **Article 49 (1) (h)** of the **Constitution of Kenya 2010**.
3. The application for bond in respect of the 1<sup>st</sup> accused is opposed vide the Replying affidavit sworn by No.47822 Cpl John Adharis of Nyangusu police station on 30<sup>th</sup> January 2014. He states that it would be unsafe to release the accused persons on bond because their own lives will be in danger as the situation on the ground is volatile. He also depones that if released the accused persons might interfere with investigations. The deponent also states at paragraph 11 of his affidavit that because of the severity of the sentence should the accused persons be eventually convicted, there is a great temptation for them to abscond or go into hiding if released on bond/bail pending trial. The application by the 2<sup>nd</sup> accused is not opposed as per paragraph 3 of the affidavit sworn by No.41925 Cpl Antony Musembi of Gucha CID Headquarters.
4. I have carefully considered the grounds put forward by the State in opposition to the application for bond. The allegation that the accused persons are likely to interfere with investigations cannot carry any weight in this matter because the investigations have not been shown to be still ongoing.
5. As regards the possible death sentence in case of a conviction, it is not lost to the court that in passing **Article 49 (1) (h) of Kenya**, the people of Kenya fully knew and understood that the offence of murder, which is now bailable, carries a maximum penalty of death. In my view therefore, the court has a duty to

exercise its discretion in most judicious manner when deciding whether or not to grant bond and if so, on what terms. It is also not quite clear to the court from a reading of paragraph 7 of the Replying Affidavit in what way or manner the accused persons' life would be endangered, and whether the situation as it obtained on 30<sup>th</sup> January 2014 still obtains today.

6. The court has had occasion to carefully read the Pre-Bail Reports filed in court on 14<sup>th</sup> February 2014 with regard to Enock Nyandieka Bebeni and 19<sup>th</sup> February 2014 in respect of Geoffrey Birundu Monari. From those reports, Enock Nyandieka Bebeni is aged 17 years, having been born in 1997. Both his parents are alive. He dropped out of school at class 8 and now engages in brick making. His two uncles have promised to stand surety for him should the court deem it fit to grant him bond as recommended.

7. The second accused, Geoffrey Birundu Monari is aged 24 years. He dropped out of school at Form 3 and went into “**boda boda**” business. His mother is deceased while his father is ailing. His paternal grandfather is willing to stand surety for him if the court grants the application.

8. Upon careful consideration of all the circumstances surrounding this case, and in light of the contents of the Bail Reports, I am satisfied that there are no compelling reasons why the two accused persons may not be released on bond. Further, considering the age of the accused persons herein and what they own in terms of material wealth, I allow the bond application on the following terms:-

*1. Each of the accused persons shall be released on their own bond of Kshs.500,000/= (Kenya Shillings five Hundred Thousand only) with 2 sureties of Kshs.2,000,000/= each (Kenya Shillings Two Million). The sureties shall be approved by the DR of this Honourable court.*

*2. Once released, the accused person shall appear before the DR of this Honourable Court for mention of their case once every 30 days until the case is heard and determined or until further orders of this Honourable Court.*

*3. In default of 2 above, the bond shall stand cancelled and the sureties put to account.*

*4. Mention on 01/09/2014.*

9. Orders accordingly.

**Delivered, dated and signed at Kisii in open court this 1<sup>st</sup> day of August, 2014**

**R.N. SITATI**

**JUDGE.**

In the presence of:-

Mr. Majale for State

Mr. C.A. Okenye for Accused persons

Mr. Bibu - Court Assistant