



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 23 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ENOCK NYABUTO.....1ST ACCUSED

JOHN OCHWARI OBAE.....2ND ACCUSED

RICHARD OMBIRO RESI.....3RD ACCUSED

ALLOYS OGEO.....4TH ACCUSED

RULING

1. This an oral application for bond. The accused persons are charged with murder contrary to section 203 as read with section 204 of the penal code. It is alleged that on diverse dates of between 18th and 19th January, 2014 at Gesabakwa village, Onywere sub-location in Marani district within Kisii County, jointly murdered Asuma Menge. They deny the charge. And they would want to be released on bond pending the hearing and determination of their case.
2. Bond/bail is a constitutional right under article 49(1)(h) of the Constitution unless there are compelling reasons to deny that right.
3. The state/prosecution must file an affidavit if they think the accused should not be released on bond. The state has not filed a response to that application. No objection was raised when the application was being made.
4. However, in the court file, there are two pre-bail assessment report on the accused persons. a) Alloys Ogao Edwin, aged 18, is an orphan and the deceased's relatives are not ready to receive him. However, the accused person's relatives are willing to accept him back home and equally ready with a land title deed as surety for his release. The local administration say the accused is not associated with any form of lawlessness. The accused himself in this case agrees and promises to obey the bond terms as ordered by the court.
5. Accordingly, I allow the application and order that the accused be released on a personal bond of Kshs. 500,000 with one surety of similar amount.
6. b). The second accused, **Richard Ombiro Resi**, is 30 years old. The assessment report reveals that this accused, may not easily be accepted in his community. He has bad history. It is doubtful whether he may honour the bond terms.
7. Accordingly, his application is hereby denied.
8. It is so ordered.

Dated and delivered at KISII this 20th day of November, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Ondari holding brief for Sagwe for the applicant.

Mbelete for state for the respondent

Edwin Mongare Court Clerk.