



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CRIMINAL CASE NO. 26 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**IBRAHIM ASUMANYACHEO.....1<sup>ST</sup> ACCUSED**

**ABTON NYACHEO ASUMA.....2<sup>ND</sup> ACCUSED**

**DUNCAN ANUNDA ASUMA.....3<sup>RD</sup> ACCUSED**

**RULING**

1. This an oral application for bond for three accused persons, **Ibrahim Asuma Nyacheo** and **Abton Nyacheo Asuma** and **Duncan Anunda Asuma**. The three were charged with the offence of murder, contrary to section 203 as read with 204. It is alleged that between 28<sup>th</sup> January, 2014 and 12<sup>th</sup> February, 2014 at Matongo sub-location, Matongo Location in Marani District within Kisii County; jointly murdered **JACKLINE MORAA** They deny the charge. And ask for bond pending hearing and determination of their case.
2. They rely on article 49(1)(h) of the Constitution of Kenya which provision makes murderailable, unless there are compelling reasons to deny them bond.
3. In this case, the state has filed an affidavit dated 4<sup>th</sup> November, 2014, the deponent being an investigating officer.
4. In paragraphs 5,6 and 9 respectively the state says that if released the applicants would interfere with witnesses which would lead to miscarriage of justice. Further, the state also says, the temptation to abscond or go into hiding if released on bail pending trial is real.
5. The counsel for the applicant, oppose the state's submissions. He contends the two paragraphs as stated are not compelling reasons by so stating. There is protection of witnesses act, that the court can use its authority to shield the suspects from tempering with witnesses.
6. He says bond is a constitutional right. Prosecution must give concrete examples of what occurred in particular matter as a precedent and how the court respondent, this is more persuasive.
7. The pre-bail assessment report was filed for Abton Asuma only. That report is favourable to him. He is 21 years old. The husband of the deceased has no objection to the accused being given bond. The

other two, Ibrahim Asuma Nyacheo and Duncan Anunda Asuma, had no assessment report made on them.

8. The court would interested to have pre-bail assessment report made on the two accused for the court to make a considered decision on their bond application.

9. In the meantime, I allow the application for bond in respect of Abton Nyacheo Asuma and have him released on personal bond of Kshs. 500,000 with two sureties of similar amount the same to be approved by the Deputy Registrar of this court.

10. Upon his release he will attend court for mention of his case every month until the hearing and determination of his case. Any default of one mention without credible explanation, the bond will forthwith be cancelled and the sureties will be made to account.

11. The first such mention to be on 22<sup>nd</sup> December, 2014.

12. It is so ordered.

**Dated and delivered at KISII this 20<sup>th</sup> day of November, 2014**

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:-**

Ondari holding brief for Kaburi for the applicant

Mbelete for the state for the respondent

Edwin Mongare court clerk.