

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 88 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JAMES ONCHORE MOKEMA.....ACCUSED

RULING

1. On 23rd September the accused person, through his Counsel, Bigogo, applied for bond. The accused is charged with the offence of murder, contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 1st September, 2014 at Ebachwa sublocation in Masaba South Sub-county within Kisii County, the accused, **James Onchore Mokema** jointly with another not before court murdered **Robert Abuga Mose**. He denies this charge. And he asks the court to grant him bond, to have his case heard and determined while he is at home with the safety of his family.
2. The provisions which the accused is relying on, is under **article 49(1)(h)** of the Constitution of Kenya. This provision grants the accused authority to seek bond even in murder offences. It is permissible provided there are no compelling reasons to order otherwise. It is incumbent upon the state to give compelling reasons.
3. The state- the prosecution has filed today i.e. 03/12/2014 their response to the application for bond. Para.5 thereof they aver that the accused will be in contact with witness. One eye witness namely Richard Okongo Oroni has already been approached by people claiming to have been sent by the accused to ask him to change his testimony or fail to turn up to testify. We believe the applicant will interfere with evidence to be tendered against his lending to miscarriage of justice. In para.8 thereof, the state further states the temptations to abscond or go into hiding if released on bail pending trial is real.
4. The pre-bail assessment report filed on 14th November, 2014, the accused is 44 years old. He is married. This report favours the accused.
5. However, having regard to the state's response, that the accused could interfere with witnesses, the court wishes to dismiss his application for bond.
6. It is so ordered.

Ruling dated and delivered at **KISII** this 15th day of December, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Bigogo for the applicant.

Majale for the state for the respondent

Edwin Mongare Court Clerk.