REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 100 OF 2014

REPUBLIC……..PROSECUTOR

VERSUS

JARED MOGAKA AYAKO……ACCUSED

RULING

1. This is an oral application for bond by the accused person, **Jared Mogaka Ayako.** The accused is charged with the offence of murder contrary to section 203as read with 204 of the Penal Code. It is alleged that on the 1st day of October, 2014 at Nyosia village in Kisii Central District within Kisii county within the Republic of Kenya murdered **Dominic Nyachae Ayako.** He denies the offence. And he now applies to be released on bond pending the hearing and determination of his case.
2. This application arises from the provision of **article 49(1)(h)** of the **Constitution of Kenya**. Those provisions subject to compelling reasons otherwise make the offence of murder bailable. It is incumbent upon the prosecution to furnish the court with reasons, compelling or otherwise, to decide on the application for bond.
3. Thus in their affidavit dated 27th October, 2014 and filed on the 30th October, the prosecution puts forward what it terms as a compelling reasons. Without doubt, the prosecution emphasis para 8, 9 and 10 respectively of their affidavit. In para. 8, the state, says, the situation on the ground is still volatile, in that if released, there could retaliatory attacks on the accused by the members of the victim's family and the community as a whole.
4. Since the accused is of no fixed abode he is obviously a flight risk. The temptation to abscond or go into hiding is very real, if released on bail pending trial.
5. The pre-bail assessment report is absent to guide the court further.
6. In the light of the submissions by the state, the application for bond be and is hereby declined.
7. Perhaps if a pre-bail assessment report be called for and if it is favourable, the application if renewed may get favourable consideration by this court.

Dated and delivered at KISII this 15th day of December, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Bigogo holding brief for Ondari for the applicant

Majale for the state for the respondent

Edwin Mongare Court Clerk.