



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

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ENOCK NYABUTO.....1<sup>ST</sup> ACCUSED**

**JOHN OCHWARI OBAE.....2<sup>ND</sup> ACCUSED**

**RICHARD OMBIRO RESI.....3<sup>RD</sup> ACCUSED**

**ALLOYS OGEO.....4<sup>TH</sup> ACCUSED**

**RULING**

1. By a ruling delivered on 16<sup>th</sup> February, 2015, this court, (differently constituted) declined to allow the application by 2<sup>nd</sup> and 3<sup>rd</sup> accused persons herein to be released on bond pending their trial.
2. The accused persons herein face the charge of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**.
3. The reasons advanced by the court for denying the 2<sup>nd</sup> and 3<sup>rd</sup> accused bond were that there was fear that the members of their community could lynch them and that their family members were unable to raise the requisite security.
4. I note that it is now over 1 year since the offence in question was alleged to have been committed. It is possible that the tempers of the members of the public could have cooled down by now.
5. I also note that the 2<sup>nd</sup> and 3<sup>rd</sup> accuseds' co-accused, the 4<sup>th</sup> accused herein **ALLOYS OGEO**, was on 20<sup>th</sup> November, 2014 granted bond pending his trial. To my mind, it will be discriminatory to allow the application for bond in respect to a co-accused and deny another accused bond when they face the same charge, but as I have noted, the court at the time of making the ruling in regard of the 2<sup>nd</sup> and 3<sup>rd</sup> accused noted that it was not safe for them to be released given the hostility of members of the public towards them then.
6. For the above reasons, I allow the 2<sup>nd</sup> and 3<sup>rd</sup> accused application for bond and order that:

*a. Each accused may be released upon executing their own personal bond of Kshs. 500,000/=*

*with 2 sureties of a similar amount.*

*b. Once they are released on bond, they shall appear in court whenever he is required to do so by the Honourable Court until the case is heard and determined or until further orders of this Honourable Court.*

*c. In default of (2) above, the bond shall be cancelled immediately and the sureties taken to account.*

Delivered, dated and signed in at Kisii on **9<sup>th</sup>** day of, **May**, 2016

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Otieno for the State
- Mr. Magara for Sagwe for the Accused
- Omwoyo court clerk