



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
CRIMINAL CASE NO 57 OF 2015

REPUBLIC.....PROSECUTOR

=VERSUS=

ELIJAH MAGATI MAINA.....1ST ACCUSED

AGNES NYABOKE MAINA.....2ND ACCUSED

RULING

On 9th March 2015 Mr. Ondari for the two accused persons applied for bond for the two. Since then, the state which sought several adjournments to file their application to show cause why the two accused persons shouldn't be released on bond has not filed its response.

Five months down the line the state has yet to file their response. There was also great effort to get the probation officer to bring to court a pre-bail assessment report to guide the court. Todate also, there has been no pre-bail assessment report.

The two accused persons, Elijah Magati Maina and Agnes Nyaboke Maina, were charged for murder contrary to **Section 203** as read with **Section 204** of **Penal Code**. The particulars thereof being that on the **20th day of January 2015** at Kenyerere Village in Masaba North Sub-County, within Nyamira County, jointly with others not before court murdered: Christopher Maina Muma.

The **Constitution Article 49 (I) (h)** stipulates, inter alia that an arrested person has the right to be released on bond or bail on reasonable conditions, pending a charge on trial, unless there are compelling reasons not to be released.

As stated earlier, the state has not upto now filed any compelling reasons to deny the two accused persons their constitutional right to bond.

The Court's Judiciary duty to rule on the bond application is not vacated hereby because the prosecutions fails and has failed to state its side of case number.

The court will proceed, in the absence of this response to rule on the matter. The constitutional importance of the right to bond by the arrested person is so important that response or no response notwithstanding.

Accordingly, the two accused persons are hereby released on personal bond of Kshs 500,000 each with

one surety each of similar amount, the same to be approved by the Deputy Registrar of the High Court.

Upon their release the said accused persons to attend court every month for mention of their case until the hearing and determination of their case or further direction of the court.

Any one default, the bonds will be cancelled forthwith and the sureties made to account

The first such mention to be on 12th November 2015

It is so ordered

This case applies Mutatis Mundantis to Agnes Nyaboke Maina.

Dated and delivered at Nyamira on this 12th day of October, 2015

C. B. NAGILLAH

JUDGE

In the presence of:

Ondari (absent) for the applicant

Malesi for the respondent

Mercy – Court clerk