



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 122 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

BENARD MOCHUMBE NYAMORATA.....ACCUSED

RULING.

1. The accused has made an application for bond. This matter was billed for plea agreement on 5th November, 2014 until the state, suddenly said that they have re-looked at the matter and have come to the conclusion, it is not the matter that is suitable for plea agreement. The state, therefore, will like to proceed and pursue the charge of murder.
2. That then prompted the application to apply for bond instead, since the trial may, as usual, take a very long time. The same having, therefore, turned down the plea bargaining, we ask that the accused person be given bond. This is that application.
3. The state did neither object nor supported the accused's application. However, perusal of the court file reveals that there is in the court an affidavit filed by the investigating officer dated 13th March, 2014. The pertinent paragraphs are 3,4 and 5 thereof.

***3 says,** the accused released on bail, his life will be in danger as the situation on the ground is volatile.*

***4 says,** accused would be in contact with the key witness who is a minor and a relative to both the deceased and the accused. He may therefore interfere with oral evidence to be tendered against him leading to injustice.*

4. The state therefore says there are compelling reasons why the accused should not be released on bail. The state prays that the court exercises its discretion and deny the accused bail so that the case may be heard and determined on merit. This affidavit was filed in March, 2014.
5. However, the pre-bail assessment report was filed on 20th June, 2014. In the report is favourable to the accused. The family members are also positive and are willing to help him attend court. Even his brother Simon Orwaru Nyamora ID.NO. **[particulars withheld]**, is willing to stand surety for him.
6. Despite the submissions by the state against release of the accused on bond, the court will be using its discretion in favour of the accused. Article 49(1)(h) of the constitution is, here, forcefully persuasive in this direction.
7. Accordingly, I allow this application and direct that the accused be given a personal bond of kshs. 500,000 with one surety of similar amount, the bond be approved by the Deputy Registrar of this

- court.
8. Upon his release the accused is to attend court mentions of his case every month until the hearing and determination of the same. The first such mention to be on 14th December, 2014. Any default, the bond will be cancelled forth with and the surety be made to account.
 9. It is so ordered.

Dated and delivered at **KISII** this 14th day of November, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Magara holding brief for Sagwe advocate for the applicant.

Majale for the state for the respondent.

Edwin Mongare court clerk.