



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO. 46 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**VICTOR MACHOGU ONTIRI.....1<sup>ST</sup> ACCUSED**

**JOSEPH GICHANA ARONI.....2<sup>ND</sup> ACCUSED**

**RULING**

1. This is an oral application for bond for the accused persons to be released on bond. The two accused persons **Victor Machogu Ontiri** and **Joseph Gichana Aroni** are alleged to have murdered **HARON OMBASI**, contrary to section 203 as read with 204 of the penal code. This occurred on the 7<sup>th</sup> day of February, 2014 at Kerema Location in Masaba South District within Kisii County jointly with another already before court murdered **HARON OMBASI**. They both deny the offence. And they now apply to be released on bond.
2. Under article 49(1)(h) of the constitution of Kenya, they have a right to be admitted to bail, unless there are compelling reasons to deny them bond. The state, the prosecutor, is obliged to state the compelling reasons if any why they shouldn't be given bond. On 14<sup>th</sup> October, 2014 the state asked for 7 days to enable them to file their response to this application. By 28<sup>th</sup> October, 2014 the state hadn't filed their response and still asked for further 7 days. However, on 6<sup>th</sup> November, 2014, the state had not responded.
3. The court will now make its ruling in this application without the benefit of the prosecution's input.
4. The only guide in this direction is the pre-bail assessment report. The report appears favourable to **Joseph Gichana Arori**. He is 33 years old. The relatives are reluctant to give surety. His release is neither a threat to himself nor to the community.
5. Accordingly, I allow the application in his respect and order that he may be released on personal bond of kshs. 500,000 with one surety of similar amount.
6. Upon his release, he is to attend court every thirty days until the hearing and determination of his case. The first such attendance to be on 8<sup>th</sup> December, 2014. Any one default, the bond shall stand cancelled and the surety shall be made to account.

**C.B. NAGILLAH,**

**JUDGE.**

7. On **Victor Machogu Ontiri**, the report does not give a favourable picture, the community fears

- that upon release on bond, the chances of absconding are high and probable.
8. Accordingly, the court declines to grant bond.
  9. It is so ordered.

Dated and delivered at KISII this 20<sup>th</sup> day of November, 2014.

**C.B. NAGILLAH,**

**JDUGE.**

**In the presence of:-**

Ondari for the for the applicant.

Mbelete for the state for the respondent.

Edwin Mongare court clerk.