



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO. 68 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**RICHARD ONGUTI OMBATI.....1<sup>ST</sup> ACCUSED**

**DEVIS MONGARE AYAKO.....2<sup>ND</sup> ACCUSED**

**RULING**

1. This is an oral application by the accused persons to be freed on bond. They were charged for offence of murder contrary to section. 203 as read with section 204 of the Penal Code.
2. This would be the second such application. The first one was made earlier whose ruling the court delivered on 23<sup>rd</sup> July, 2007 whereby the court declined bond to the accused persons. The court however gave liberty to them to review their application for bond after, say, six months.
3. This application is therefore their applicants' attempt to renew the said application.
4. The replying affidavit by the state is dated 7<sup>th</sup> day of June, 2013. In paragraph 7 thereof, the state avers that if the accused admitted to bail, their lives may be in danger as the situation on the ground is volatile. This court is unaware whether this volatility on the ground has subsided. The state, in response to the application on 5<sup>th</sup> November, 2014, the prosecutor stated that they have not filed their affidavit but then added, on the face of it, however, there is no opposition to bond. Unknown to themselves, the affidavit has always been on the file.
5. The pre-bail assessment report filed on 23<sup>rd</sup> September, 2014, the community abhors the memory of the incident and pray that the accused persons to continue being in custody for avoidance of occurrence of such an act as they are not ready to forgive the accused persons. Chances of them being lynched are considerably very high. Both of them are safe in custody. The state may not guarantee their safety.
6. Article 49(1)(h), admittedly makes the offence of murder bailable, compelling reasons preclude the court to do so. The affidavit of reply dated 7<sup>th</sup> of June, 2013 and the pre-bail assessment report recently filed, when the court thinks time enough has elapsed and subsided with it concomitant emotions on the ground. However, this is not so. The situation as described gives the court compelling reasons, yet again, to refuse admission to bail.
7. Accordingly, the application for bond fails. The accused persons are at liberty to renew their application at some future date.

8. It is so ordered.

Dated and delivered at KISII this 14<sup>th</sup> day of November, 2014

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:-**

Magara holding brief for Soire for the applicant.

Majale for the state for the respondent

Edwin Mongare Court Clerk.