



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO. 16 OF 2013**

REPUBLIC.....APPLICANT

**VERSUS**

DENNIS NYABENGI.....ACCUSED

**RULING**

1. This is an oral application for bond for the accused person, **Dennis Nyabengi Miroro**. The said accused person was charged for murder contrary to section 203 as read with 204 of the Penal Code. It is alleged that on the 16<sup>th</sup> day of February, 2013 at Nyakumbati sub-location in Masaba Souty District within Kisii county he murdered **Mary Kemuma Nyakoni**.
2. He denies the offence but then asks for bond. The constitution of Kenya 2010 makes murder bailable, unless there are compelling reasons for bond not to be granted. The constitution further states if the accused is released, it should be on reasonable conditions.
3. The state on its part has not filed their response giving compelling reasons why bond should not be granted. However, the court has a pre-bail assessment report from the Department of Probation. In that report the accused is in constant conflicts with his community members. In particular, his own father is wary of him and feels he will not be safe with him out on bond. He contends that the accused being out on bond will be a threat to his own father and a threat to other family members who are witnesses in this case and he may not be trusted to keep the bond terms.
4. The community say, ***“it is not only him we want; his mother too is not welcome in our village for she is the one encouraging him to commit crimes”***.
5. The police at Ibacho police post say they may not guarantee his security given that he was rescued from an irate crowd who wanted to lynch him.
6. Thus the report concludes: ***“it is my opinion that the accused person, in the best interest of his life, his father’s security and the security of the general community, the accused person is NOT fit to be admitted to bail”***. Thus not recommendable for bail.
7. The court takes into account these opinions sometimes to secure the life of the accused himself despite his constitutional right to bail. The right of the victim and their family is also taken into consideration. For both rights are constitutionally guaranteed.
8. Accordingly, the application to admit the accused to bond and bail is hereby declined.
9. It is so ordered.

Dated and delivered at KISII this 11<sup>th</sup> day of November, 2014

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:-**

Onyancha for Masese for the applicant.

Otieno for the state for the respondent

Edwin Mongare Court clerk.