



**KENYA LAW**  
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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL MURDER NO.145 OF 2012**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**BERNARD NJOGA AMENYA .....ACCUSED**

**RULING**

1. The accused herein, Bernard Njoga Amenya is charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**, the particulars of the offence being that on the 7<sup>th</sup> day of June 2012 at Endiba village in Kiabonyoru location in Nyamira County, he murdered James Amenya Kinanga. He has pleaded not guilty and is awaiting trial.
2. In the meantime, the accused seeks to be released on bond as provided under **Article 49 (1) (h)** of the **Constitution 2010**.
3. The application is opposed vide the Replying Affidavit sworn by Number 68156 PC Charles Muchoya of Nyamira police station. The deponent avers at paragraph 6 of the affidavit that due to the fact that the applicant disappeared for over six (6) months after committing the offence on 7<sup>th</sup> June 2012 only to be arrested on 12<sup>th</sup> November 2012, there is a likelihood that if released on bond, he will abscond. The deponent avers further that after committing the offence in Nyamira, he was arrested in Cherangany in Trans Nzoia County. Further, the deponent avers that because the offence of murder is so serious and carries a death penalty upon conviction, the temptation for the accused to jump bail is real. He urged the court to refuse the accused's plea for release on bond pending trial.
4. Mr. Kaburi, counsel for the accused submitted that bond is a constitutional right and in the absence of any concrete evidence to support the allegations of paragraphs 8 and 9 of the Replying Affidavit, the court ought to allow the application as prayed.
5. The court called for and has been furnished with a Bail Assessment Report dated 20<sup>th</sup> November 2013. The report makes no mention of the fact that the accused ran away from home for about 6 months after the alleged offence. The report points a good picture of the accused who is said to be a father of 3. He is said not to be a threat to societal peace and that his life is not in danger.
6. It is now a well established principle that the main consideration by court's dealing with applications for bond is whether the accused shall attend court to answer the charges brought against him. Other considerations include such factors as whether the release of the individual on bond will endanger public security, safety and the overall interest of the wider public. The court is also to consider whether there is a possibility of the accused interfering with witnesses if he is released on bond.
7. Before are conflicting views on whether or not the accused shall appear for his case or not; one view is given under oath while the other one is contained in a report that has not been subjected to

- scrutiny under the law of evidence.
8. IN my considered view, the accused person would be a flight risk if released on bond. The accused was first brought to court on 27<sup>th</sup> November 2012,. There is no complaint by the accused that he was kept in custody for longer than the statutory time frame before being brought to court. I am therefore persuaded that the accused ran away from home for a period of six (6) months before his arrest in November 2012, and there is therefore no guarantee that he will attend court for the conduct of his case if he is released on bond.
  9. In the premises, the accused's application for bond be and is hereby dismissed.
  - 10.Orders accordingly.

**Dated and delivered at Kisii this 19<sup>th</sup> day of December, 2013**

**R.N. SITATI**

**JUDGE**

**In the presence of:**

**Mr. Shabola for State**

**Mr. Kaburi for Bwongonga for Accused persons**

**Mr. Bibu - Court Clerk**