



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL MURDER NO.90 OF 2010

AS CONSOLIDATED WITH

CRIMINAL CASE NO.97 OF 2010

REPUBLIC PROSECUTOR

VERSUS

DAVID NGASORA NYAMONGO 1ST ACCUSED

THOMAS ARANGA NYANDIBA 2ND ACCUSED

RULING

1. The two accused persons, David Ngasora Nyamongo and Thomas Aranga Nyandiba are jointly charged with the murder of Hellen Nyamongo contrary to **section 203** as read with **section 204** of the **Penal Code**. They both pleaded not guilty.
2. This ruling relates to an application for bond by both accused persons. The 1st accused, David Ngasora Nyamongo has had two similar applications heard and dismissed on grounds that he was a threat to prosecution witnesses. He has reviewed his application for bond on grounds that his children who have alleged that he threatened them have not sworn any affidavits to confirm that they have received any threats from him. As concerns his brother, Charles Ombati Nyamboga, the 1st accused avers that the said Charles Ombati Nyamboga stays in the United Kingdom and knows nothing about the situation on the ground in the accused's home. The 1st accused also avers that the Investigating Officer in this case has not sworn any affidavit to confirm allegations of threats to witnesses.
3. As for the 2nd accused's counsel Mr. Masese submitted that he is currently serving a longer sentence in Criminal case No.566 of 2010.
4. In arguing the application on behalf of the 1st accused, Mr. Ondari submitted that there are no compelling reasons why the said accused person should not be released on bond. Counsel urged the court to consider the Bail Assessment Report and grant bail to the accused.
5. Mr. Shabola, Prosecution counsel opposed the application by reiterating the reasons advanced against the application on 22nd February 2012 with respect to the 1st accused. Counsel submitted that the 2nd accused ought not to be considered for bond because he is serving 10 years imprisonment in Criminal case No.566 of 2010.
6. I have now carefully considered the application, the submissions and the law. The issue that arises is whether the 1st accused ought to be granted bond.
7. After considering all the above, I do not think that there is any good ground for this court to grant

the order sought. It is now well settled that apart from considering the omnibus criteria of whether an accused released on bond will avail himself to answer the charge against him it is equally important for the court to consider whether, if an accused is released on bond, he is likely to interfere with witnesses.

8. There is evidence on record that the 1st accused, who has already issued threats to his daughter one Jackline Moraa and her brother Duke Arasa Nyamongo. Jackline Moraa swore an affidavit filed on 20th February 2012 confirming the threats and also wrote a letter dated 30th January 2012 to the State.
9. For the above reasons I find that the 1st accused is not a fit person to be released on bond. As for the 2nd accused, he is serving a prison term and as such it would be futile for this court to make any orders granting him bond.
10. The application is accordingly dismissed.
11. It is ordered.

Dated and delivered at Kisii this 19th day of December, 2013

R.N. SITATI

JUDGE

In the presence of:

Mr. Shabola for State

Mr. Nyagwencha for B.O. Masese for 1st Accused

and for Sonye Ondari for 2nd Accused

Mr. Bibu - Court Clerk



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