



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 7 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

MOHAMMED EDIN HASSANOW alias CHOKE.....1ST ACCUSED/APPLICANT

IBRAHIM ADAN MOHAMMED alias DOMAL.....2nd ACCUSED/APPLICANT

MOHAMMED IBRAHIM MAALIM ALI alias GERILE..3RD ACCUSED/APPLICANT

RULING

1. Before me are three applications brought by way of Notice of motion under Section 123, 124 and 125 of The Criminal Procedure Code, and Article 24 (1) (a) as well as Article 49 (1) (h) of The Constitution of Kenya, all dated 18th day of April, 2018 Each of the accused persons filed a separate application in which all the three appear as applicants, the only difference being that each application contains a supporting affidavit from only one accused person.

2. The prayers are as follows:

(i) That the accused persons' be released on bail pending hearing and determination of the case herein.

(ii) Any other order in favour of the accused.

3. As I have said above, each application is supported by a separate affidavit of one accused person, which desirable the stations of life and occupations of the accused, all of whom come from Mandera County.

4. At the hearing of the applications, Mr. Nzili for the accused submitted that the accused had been in custody for about 18 days now, and because of the rainy weather, it had taken them long to be brought to Garissa Court. Counsel stated that the accused persons were ready to attend Court, as when required and could also report to a Police station when granted bail. Counsel also stated that they would not interfere with witnesses, nor were they a flight risk.

5. Mr. Balongo for the State, informed the court that he was in contact with the Investigating Officer who could not come to court because he was unwell. However, Mr. Balongo submitted that investigations had been complete and that the Investigating Officer had told him that there was no probability of the accused persons interfering with witnesses. Counsel concluded by stating that the state did not have compelling reasons to oppose bail.

6. Bail is a Constitutional right under our present Constitution and is available to all accused persons, even if they have been charged with capital offences.

7. Courts have held that the burden is on the prosecution to demonstrate to the court, the compelling reasons if any for denial of bail.

8. I have considered the contents of the affidavits filed in support of the applications, and the submissions of both the defence, and prosecuting counsel and I am assured that the accused persons will not interfere with prosecution witnesses. The State also does not oppose bail thus, I find no reason to deny any of the 3 accused persons' their right to bail. I thus allow the applications and order as follows:-

(i) Each of the three (3) accused will be realized on signing his own bond of Kshs; 600,000/= with one surety of similar amount. In the alternative they can be released on depositing in court a cash bail of Kshs; 800,000/= each.

(ii) Each of the three (3) accused persons will attend the hearing of the case, and all mentions thereto.

(iii) They will not interfere with prosecution witnesses.

Dated and Delivered at Garissa this 20th April, 2018

George Dulu

JUDGE