



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NANYUKI
CRIMINAL CASE NO. 36 OF 2016

REPUBLIC.....PROSECUTOR

versus

J M G.....1st ACCUSED

D K W.....2nd ACCUSED

RULING

1. There is no doubt the Constitution pronounces its self in **Article 49 (1)(h)** that an arrested person has a right:

to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not be released.

IN REPUBLIC - V- MAMUSH HIRBO FAJA [2014] eKLR the court stated thus: while discussing an accused's right to bail:

“Article 49 (1) (h) provides that an accused person is entitled to be released on bond/bail unless the prosecution has compelling reasons to the contrary. The right to bail is therefore not absolute and it is at the discretion of the court.

The right to bail does not depend on whether or not the prosecution have strong evidence against the accused. The relevant constitutional provision does not classify offences that are bailable or not- Bail is open to all offences including capital offences. The basis of this right has a bearing on the presumption of innocence until prove guilty as provided for by Article 50 (2) (a). The seriousness of the offence and the strength of the evidence is therefore, not a basis of denying the accused person bail.”

2. The subjects in this case **J M G and D K W** who are 16 and 17 years old respectively seek they be released on bail at the close of the defence case pending this court's judgment. Learned Counsel Mr Chweya for both accused submitted that they, and in particular the 2nd subject needs to attend school. That while he has been detained at the children's home 2nd subject had been attending the library and studying privately.

3. The Constitutional right to bail is subject to there being no compelling reasons not to grant bail. The subjects in making their application for bail gave no assurance, at all, that they will attend court for their

judgment. There is in my view a real risk that the subjects would abscond and take flight, now that their judgment is scheduled for 27th September, 2017.

It is for that reason that their applications for bail are dismissed.

Dated and Delivered at Nanyuki this 2nd August 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

J M G : 1st Accused

D K W : 2nd Accused

For 1st accused

For 2nd Accused

For state:

Language

COURT

Ruling delivered in open court

MARY KASANGO

JUDGE