

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 412 OF 2016

WILLIAM NTAIMENTI KIBARA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant is the accused in Nairobi Traffic Case No. 9048 of 2016 where he is charged with seven counts under the Traffic Act Cap 403 Laws of Kenya, namely; two counts of causing death by dangerous driving, careless driving, driving a defective motor vehicle, failing to report an accident, driving a motor vehicle on a public road without a driving licence and failing to carry a driving licence. On taking the plea, he applied for bail which the prosecution opposed. The court denied him bail on grounds that he was a flight risk. Under Article 49(1)(h) of the Constitution bail/bond can only be denied if there exists compelling reasons.

In the present case, the prosecutor in court only submitted that the charges attracted stiff sentences if convicted and that the applicant did not present himself to the police immediately after the accident. He was therefore deemed a flight risk. In my view, that statement of submission was not convincing enough to constitute a compelling reason to warrant a denial of bail. The prosecution ought to have advanced concrete reasons such as that the applicant did not have a fixed abode or that his antecedents were doubtful. The offences charged are bailable and do not warrant a denial of bail. In the circumstances, I hold that the learned trial magistrate had no justification to deny the applicant bail.

In the result, I admit him to a cash bail of Kshs. 150,000/= or to a surety bond of Kshs. 500,000/= to be assessed by the trial magistrate. It is so ordered.

DATED and DELIVERED this 17th day of NOVEMBER, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Mr. Ngari for the Applicant*
- 2. Mr. Ongige for the Respondent.*