



**REPUBLIC OF KENYA**

**High Court at Garissa**

**Criminal Case 21 of 2012**

**ALI IBRAHIM ABDIRAHMAN.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant seeks bail/bond pending trial. He pegs his application on Articles 20 (3) & (4); 21 (1); 22 (3) & (4); 49 (1) (h); & 50 (2) (a) of the Constitution of Kenya 2010. He also relies on section 19 of the Sixth Schedule to the Constitution of Kenya 2010 read with Rule 23 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules 2006. He argues that the offence of murder is bailable under the law; that he has a right to bond/bail and to be presumed innocent until the contrary is proved; that he is a Kenyan citizen residing in Mandera and that he will avail himself to attend trial; that his family resides in Mandera and he has no reason to abscond. In addition to the grounds in supporting affidavit, counsel for the applicant has submitted that one can only be denied bail if there are compelling reasons to persuade the court.

The learned State Counsel opposed the application and argued that the applicant has not attached any document to prove that he is a Kenyan citizen. In the same breath the learned State Counsel asked the court to put stringent conditions to ensure the applicant attends court. I am not wrong, in my view, in stating that the State is not seriously opposed to this application.

Article 49 (1)(h) grants accused persons, without qualification to the offence, right to be released on bond or bail on reasonable conditions pending trial unless there are compelling reasons not to do so. The constitution or any other law has not defined compelling reasons and the courts have been using their discretion to determine what according to them amounts to compelling reasons.

My approach has been that the state, in opposing an application for bail, ought to put forward solid reasons why an applicant for bail should be denied her/his right to freedom pending determination of her/his case. Like other courts, in determining whether or not to release an applicant on bail, I have always taken into consideration the following factors, among others:

- i. The nature of the charges and the strength of the evidence in support
- ii. The gravity of the punishment in the event of conviction
- iii. The previous criminal record of the accused if any
- iv. The probability that the accused may not surrender himself for trial

- v. The likelihood of the accused interfering with witnesses or suppressing any evidence that may incriminate him
- vi. The likelihood of further charges being brought against the accused
- vii. The probability of guilty
- viii. Detention for the protection of the accused
- ix. The necessity to procure medical or social report pending final disposal of the case

However, in so doing, it has not escaped my mind that the paramount consideration of all the above factors is whether an applicant will present herself/himself in court for the hearing of her/his case until it is concluded. This requirement of the applicant to avail herself/himself for trial when she/he is required is at the centre of any trial. Without her/him no trial can take place, hence the emphasis. **(see Watoro v. Republic in Criminal Application Number 166 of 1991; R. v. Danson Mgunya & Another [2010] eKLR).**

That murder is a serious offence is in no doubt. However this court has not been given any reason to put in doubt the likelihood that the applicant will turn up for the hearing of this case. In the absence of such reason I will and do hereby allow this application and set the following terms of bail:

- i. That the applicant is released on cash bail of one million Kenya Shillings (Kshs 1, 000, 000).
- ii. Alternatively, he will execute a bond of two million Kenya Shillings (Kshs 2,000,000) with one Kenyan surety of similar amount.
- iii. He will report to the DCIO Manderla once every two weeks until this matter is heard and concluded.

It is so ordered.

**S. N Mutuku**  
**Judge**

Delivered in open court his 27<sup>th</sup> February 2013.