



REPUBLIC OF KENYA

High Court at Kakamega

Criminal Case 46 of 2012

(An application for bond pending appeal)

REPUBLIC PROSECUTOR

VERSUS

PETER INGOKA KHATSIMBA ACCUSED

RULING

The accused who is charged with murder has applied through a Notice of Motion dated 31st January 2013 for bail. The specific prayers in the application are as follows:-

1. May this Honourable court be pleased to grant me bond/bail pending the hearing and determination of my HCCR. Case No. 46/2012.
2. I be given such terms that is well accepted to the Honourable court.

He filed the application in person, but the record shows that he is now represented by Mr. Aburili advocate. When the application came up for hearing yesterday, the accused's advocate was not present, but he chose to argue his own application. The accused stated that he wanted to be released on bail because his children were suffering at home as his wife was sick.

The learned State Counsel, Mr. Oroni, did not oppose the bail application.

The accused has been charged with murder, which was recently made a bailable offence under the Constitution of Kenya 2010.

When an accused person is charged in court, there is a presumption of innocence until he is proved guilty. He or she may be released on bail. However, the court has to consider whether the accused will attend trial. The gravity of the offence has to be taken into account. In addition, the court has to consider whether the accused is likely to interfere with witnesses or commit similar offences to that charged if released on bail. In capital offences also, my view, the court has to consider whether his safety in the community is guaranteed, if he is going back to live in the same locality of the alleged offence, since a life has already been lost.

As the learned State Counsel is conceding to bail, I find no reason to continue detaining the applicant in custody.

I therefore order as follows:-

1. The accused will be released on his signing a bond of Kshs.1,000,000/= (one million shillings) with two sureties of similar amount.
2. He will not interfere with witnesses.
3. He will attend court mentions of the case and the hearing thereof. The first mention will be on 25/4/2013.

Dated at Kakamega this 14th day of February, 2013

**George Dulu
J U D G E**