



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Case 16 of 2012

REPUBLIC PROSECUTOR

versus

ABRAHAM GITHEKI MUBIA.....ACCUSED

RULING

1. By a notice of motion dated 20th November 2012 the applicant moved the court under the provision of article 49(1)(h) of the Constitution of Kenya to be released on bond pending his trial.
2. The application was supported by the affidavit of the applicant ABRAHAM GITHEKI MUBIA in which he stated that there are no compelling reasons that would deny him the right to bail pending the hearing of this case and that he is ready to abide by all the terms and conditions that the court may set for his release.
3. The application was opposed by Miss Kitoto for the State who submitted that the applicant is charged with the killing of his father and the main witness at the trial will be his mother.
4. The applicants mother REGINA WAMBUI addressed the court and stated that she would like the accused to be in custody during the period of trial.
5. To enable the court decide on the application herein I ordered for pre-bail report which has now been filed before the court in which the Probation Officer recommends that the applicant is not suitable for bond because the community and his relatives are afraid of what the applicant can do if released on bond.
6. It must be pointed out that right to bond is a constitutional right under Article 49(1)(h) and can only be taken away if there are compelling reasons not to be released.
7. The constitution does not define what constitute compelling reasons and the determination thereof are left to the discretion of the court so as to take into account the circumstances of each case.
8. The fact that the applicant if released on bond will have to live with his mother who is the main witness herein and whereas the applicant is at this stage considered innocence, the circumstances leading to the commission of the alleged offence herein are to my mind compelling reasons enough to deny the applicant his constitutional rights at this stage.
9. In the circumstances of this case I am of the opinion that the applicant should not be released on bond must therefore dismiss the application and order that the accused be in remand during the period of trial.
10. The applicant however has 14 days right of appeal.

Dated, signed and delivered at Nyeri this 16th day of May 2013.

J. WAKIAGA

JUDGE

Mr. Makunja for the State.

Mr. Mugambi for Mr. Kimunya for accused.

Court: The ruling is delivered in open court in the presence of the above named. The matter to be mentioned on 19th June 2013.

J. WAKIAGA

JUDGE