

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT G ARISSA

CRIMINAL CASE NO 22 OF 2012

MOHAMED MOHAMUD ABDI

ABDI ALI ABDI.....APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

The two applicants are charged jointly with three others with the offence of murder. They appear as 1st and 2nd accused persons in the main case. They have come to court under the provisions of the Constitution (Articles 49 (1) (h) and 50 (2) (a)) seeking to be admitted to bail pending the hearing and determination of this case. The application is dated 13th March 2013 and is supported by an affidavit of their defence counsel sworn and filed on the same date.

This is not the first application by the applicants on the same issue. They appeared in court on 17th October 2012 and prosecuted a similar application. The court determined the application and gave its ruling on 26th November 2012. In that application, bail was being sought for all the five accused persons. In this particular application, two of the five accused persons are the applicants. I have read the lengthy affidavit in support of the application. Other than paragraphs 9, 10 and 11 of the said affidavit, the rest of the paragraphs are not helpful to the applicants. The averments contained in the other paragraphs are matters that are better left out for evidence in the main case.

Paragraph 9 gives the family information in respect of the 1st applicant while paragraph 10 gives the family background in respect of the 2nd applicant. In his submissions, counsel for the applicants has told the court that the applicants are not a flight risk and they are firmly grounded at Madogo where they live with their families. It was further submitted that the evidence so far adduced does not implicate the applicants and for that reason they will have no reason to flee.

The application has been opposed with the learned State Counsel submitting that there is yet more evidence to be adduced in support of the prosecution case; that the compelling reasons to deny bail ought not to be beyond reasonable doubt but on a balance of probability; that the applicants had brought a similar application and they are required to show that circumstances have changed.

I have considered the application in detail. I am also alive to this court's earlier ruling where I observed that 1st applicant has family roots in Madogo, Tana River County where he lives with his family and 2nd applicant also lives with his family in Madogo. Additionally the 1st and 2nd applicants have in paragraphs 9 and 10 of the affidavit in support of the current application provided further particulars of some of their relatives. In my considered view the prosecution has not advanced compelling reasons to persuade this court to deny bail to the applicants. I will and do hereby admit the two applicants to bail/bond on the following terms:

- i. Each applicant, being 1st and 2nd accused persons in the main case, will execute a bond of one and half million Kenya shillings (Kshs 1,500,000) with a surety each of similar amount.
- ii. In the alternative each applicant will deposit a cash bail of one million Kenya shillings (Kshs 1,000,000).

I make orders accordingly.

S.N MUTUKU

JUDGE

Dated and delivered this 17th day of July 2013.