

REPUBLIC OF KENYA

High Court at Mombasa

Criminal Case 42 of 2012

REPUBLIC PROSECUTION

=VERSUS=

NDORO MBEGA 1ST ACCUSED

GABRIEL MBEGA SHEHI 2ND ACCUSED

RULING

The two accused persons through their Advocate **Mr. Atancha** have applied to be released on bail during the pendency of their trial. Bail is a right guaranteed to **all** suspects by virtue of Article 49(1)(h) of the Constitution of Kenya 2010. **MR. TANUI** learned State Counsel has opposed the grant of bail to the accused persons on the basis that one of the key witnesses has been receiving death threats from persons related to the accuseds. These threats have been reported to the police.

The Constitution does provide that a suspect may be denied the right to bail where compelling reasons exist. The fact that a witness is receiving death threats and has to seek refuge at the police station does in my view amount to such a compelling reason. Though the threats are not being issued directly by the accused persons the same are being issued by persons known to the accuseds and on their behalf. There is the very real possibility that if released on bail the accuseds will act to interfere with witnesses. For this reason I decline to grant bail at this stage. The bail application may be renewed at a later stage.

Dated and Delivered in Mombasa this 26th day of October 2012.

**M. ODERO
JUDGE**

In the presence of:

Mr. Atancha for accused