



**REPUBLIC OF KENYA**

**High Court at Machakos**

**Criminal Case 6 of 2009**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**DENNIS NTHENGE CHARLES ..... ACCUSED**

**R U L I N G**

After three prosecution witnesses finished testifying **Mr Mung'ata**, counsel for the accused filed an application by way of a **Notice of Motion** for bail dated 17<sup>th</sup> August 2012.

The application was brought under **Article 49(h)** of the **Constitution of Kenya**. The grounds of the application are that the applicant was employed and a law abiding citizen; that he had a permanent place of abode, and was therefore not a flight risk; that he was of good moral standing; that his release would enable him adequately prepare for his defence; that the interests of justice required that the orders sought be granted.

The learned State Counsel **Mr Mwenda** did not object to the application. Counsel submitted that only three witnesses, one being a doctor and one the investigating officer, had not testified.

This is an application for bail pending trial. Under **Article 49(i) (h)** of the **Kenya Constitution 2010** every accused person is entitled to bail. It does not matter if the offence is a capital offence. Bail is meant to secure the attendance of an accused person for the trial.

The release on bail for capital offenders in Kenya is a new development that came into being with the Constitution which was promulgated in August 2010. As a result, courts have been developing parameters for the releasing on bail of accused persons in such situations. The parameters that have been taken by courts in such applications include the following:-

- (a) **The likelihood that the accused person will appear for trial.**
- (b) **The likelihood that the accused person will interfere with witnesses or investigations.**
- (c) **The severity of the sentence likely to be imposed in the event of a conviction.**
- (d) **The likelihood of commission of more offences or whether the accused person is a risk to the community.**
- (e) **The safety or security of the accused person.**

In our present case, the main prosecution witnesses have testified. I do not see any possibility of interference with witnesses. The State also does not oppose the grant of bail. In addition, two of the three remaining witnesses are a doctor and a police officer. In my view also, the accused is not likely to commit further offences. I will grant him bail.

In the result, I allow the application and order that the accused be released upon his paying cash bail of Kshs.100,000/= or his signing bond for Kshs.200,000/= with one surety of similar amount. He will attend all mentions and hearings of the case.

Dated and delivered at Machakos this 5<sup>th</sup> day of **December** 2012.

**George Dulu**  
**Judge**

**In presence of:**

N/A for State

Mr Kasyoka holding brief for Mr Mung'ata for Accused

Accused present

Mutinda – Court clerk