



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 35 OF 2009

REPUBLIC.....PROSECUTOR

-VERSUS-

STEPHEN KARIUKI MBURU.....1ST ACCUSED

JOSEPH EKITELA KOROBE.....2ND ACCUSED

RULING

The two accused persons namely **STEPHEN KARIUKI MBURU** (hereinafter referred to as the 1st accused) and **JOSEPH EKITELA KOROBE** (hereinafter referred to as the 2nd accused), have applied to be released on bail during the pendency of their trial on the charge of Murder contrary to S. 202 of the Penal Code.

It is now well established that all suspects have a constitutional right to bail as is provided by Art. 49(1) (H) of the Constitution of Kenya. However even this constitutional right is limited in that where a court finds compelling reasons to exist it may decline to grant bail to a suspect.

I have given careful consideration to the submissions of both **MR. MUTUGI** and **MR ODUOR** in support of this bail application. I have likewise carefully considered the submissions of the learned State Counsel **MR. ONSERIO** opposing this application. I have also taken into account the pre-bail report prepared with respect to each accused by the Probation Department. By far the paramount consideration in the decision of whether or not to release an accused person on bail is the likelihood that he/she will turn up for trial subsequent to such release. The likelihood that an accused will abscond from trial is in my view a '**compelling reason**' to deny him bond. I am persuaded that neither accused has strong enough family or community ties to suggest that they will return for trial once released on bond. None of them has a fixed abode in the Coast area. Based on the foregoing I do decline to admit the 2 accuseds on bond and order that they remain in remand custody at Shimo-la-Tewa pending the conclusion of this trial.

Read in open court.

Mrs. Khisia holding brief for Mr. Mutugi for 1st accused

M. ODERO

JUDGE

22.2.2011