



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL CASE NO. 2 OF 2009**

**BONIFACE BOB CHORODO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

**BONIFACE BOB CHORODO**, the applicant herein, is before this court on the information of the Honourable Attorney General dated 7<sup>th</sup> January 2009, to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. The particulars of the offence are that on 7<sup>th</sup> day of December 2008, at Thingiti Estate in Laikipia District, within Rift Valley Province, murdered Deraje Chorodo. The Applicant has now taken out summons dated 1<sup>st</sup> February 2011 in which he has asked to be released on bail/bond pending trial. That is the subject matter of this ruling.

The Summons is premised on *Article 49(1)* of the Constitution and *Section 123(1)* and (2) of the Criminal Procedure code. The application has been strenuously opposed by Miss Ngalyuka, learned Senior State Counsel. It is the submission of Mrs Makori, learned advocate for the accused, that since investigations in this case is complete, the accused should be released on bail because he will not interfere with witnesses. The learned advocate further argued that since the applicant is an employee of the Kenya Air Force as an aircraft technician, he will not abscond from attending court. Miss Ngalyuka, pointed out that the victim involved is the Applicant's child and that his wife will be called as a witness. It is Miss Ngalyuka's view that the accused will interfere with the evidence of that particular witness. She also argued that there are high chances that the Applicant will abscond.

I have carefully considered the rival submissions. There is no doubt that under *Article 49(1)(h)* of the Constitution, this court is enjoined to release on bond or bail on reasonable terms pending trial unless there are compelling reasons shown not to be released. In this case Miss Ngalyuka has given two main reasons which according to her are compelling reasons to enable this court deny the Applicant. Let me restate those reasons. First, it is said that the Applicant is likely to interfere with the evidence of his wife who has not testified so far. Secondly, it is said that the applicant is likely to abscond. The principles to be considered when dealing with applications for bail/bond pending trial in capital offences like murder, treason, robbery with violence etc are still to be developed by judge-made laws in this country. In other countries, Parliament has passed the relevant legislations to guide the courts. The Constitution has merely given the general guidelines. Some of the considerations which courts take into account are *interalia*:

(i) Whether the accused if released may commit other offences. In this regard, the court will look at

the past record of the accused.

- (ii) Whether the accused person if released will surrender himself to the court's custody.
- (iii) Whether the accused person will interfere with witnesses.
- (iv) Whether the accused person if released may obstruct the cause of justice.
- (v) Whether the accused person's security is guaranteed if released.
- (vi) Whether the accused person is mentally stable.

The case before this court is that which involved the murder of the accused's child. The accused's wife is yet to testify. She is obviously a compellable witness under *Section 127(3)* of the Evidence Act. From the evidence so far received from the prosecution witnesses it is apparent that the accused and his wife lived together before accused's arrest. If the Applicant is released on bail/bond, he will obviously rejoin his wife. He is likely to interfere with the evidence of such a witness. I am convinced this is one of the compelling reasons this court must look into before admitting the Applicant to bail. In a nutshell I am afraid that the accused person if released, may interfere with the evidence of his wife or suppress the evidence that may incriminate him.

In the end I am satisfied that the prosecution has ably shown a serious compelling reason why the Applicant should not be released on bail. Consequently, I dismiss the summons dated 1<sup>st</sup> February 2011.

***Dated and delivered at Nyeri this 25<sup>th</sup> day of March 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Miss Wambui holding brief Gori for the Appellant and Miss Ngalyuka for the State.