



CRIMINAL

- **Bail pending trial.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CR. CASE NO. 47 OF 2008

REPUBLICSTATE COUNSEL

VERSUS

BENARD MATI KATHAMBAACCUSED

RULING

The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. His trial commenced on 12th October 2009. It is still on going. Following the promulgation of the new Constitution, the accused person requested that he be released on bail pending trial. Article 49 (1) (h) of the Constitution of Kenya 2010 provides that an arrested person ought to be granted bail whilst pending trial or after arrest on reasonable terms. I should however state that the right to bail is not absolute. The court should consider the surrounding circumstances of the accused before granting him bail. It is for that reason that I requested the probation officer to prepare a pre-bail report to assist the court in reaching a decision on the bail application. The probation officer did present before court a report. The report informed the court that the accused is charged with killing his own blood brother. When the public were requested to give their views on the release of the accused on bail, the public informed the probation officer that the accused person had involved himself previously in criminal activities. As a result of that, the members of public in the locality where the accused resides stated that they would feel insecure if the accused was released on bail. The members of the accused family were also unwilling to commit themselves to stand surety for the accused. With that information, and because the probation officer found that the accused did not have a harmonious relationship with his immediate members of family, I find that the accused is not a suitable person to be released on bail. His application is dismissed and I order his trial to proceed from where it had stopped.

Dated, signed and delivered at Meru this 17th day of March 2011.

MARY KASANGO
JUDGE