

REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CR. NO. 43 OF 2010

REPUBLIC

.....

PROSECUTOR

VRS

GEORGE MAKASI CHEBOS

.....

ACCUSED

RULING

This is a ruling on an oral application by the accused person George Makasi Chebos for bail. The application was argued by the defence counsel Mr. Murunga who relied on Article 49 of the Constitution. The accused person faces a charge of murder contrary to section 203 and 204 of the Penal Code. It is alleged that on the 16/11/2010 at Kitungururwa Village, Changeywa Location within Bungoma County murdered Chebosi Makasi. Mr. Murunga argued that under Article 49 the accused is entitled to be released on bail pending the hearing and disposal of his case. The counsel informed the court that during the incident that led to the charge in this case, the accused was assaulted and sustained serious injuries. He suffered a fracture on the hip joint which was fixed with a metal plate. He is still attending treatment at Bungoma District Hospital and walks on clutches. He requires to undergo more consistent treatment which is only available outside prison.

The application was opposed by the state on grounds that if the accused is released on bond, he may be attacked by the family members who are still hostile. Mrs Leting told the court that the injuries sustained by the accused were inflicted by family members and also by members of public who were infuriated by the act committed by the accused. The deceased was the son of the accused. The state argued that the accused should be remanded in custody to allow tempers of family members to cool down.

Article 49 (1) (h) provides as follows:

“An arrested person has the right to be released on bond or bail on reasonable quotations pending a charge or trial unless there are compelling reasons not to be released.”

This application is grounded on the fact that the accused is in poor health and requires medical attention which is not available in prison. No medical report was produced to show the health status of the accused. However, it is on record that on 24/11/2010 when the accused was arraigned in court for plea, he was very sick. The court observed that he had multiple injuries which included stab wounds. Due to the prevailing health condition, the court observed that the accused was not in position to appreciate the charges facing him. It was ordered that he be escorted to Bungoma District Hospital for treatment. The plea was taken on the 24/2/2011. The accused was then remanded in custody pending hearing and disposal of his case. During the hearing of this application the court noted that the accused was walking with aid of clutches. All remandees are provided with medical care in prison clinics throughout the country. All the cases that the prison health facilities can not handle are normally referred to the nearest District Hospitals and in some cases to government referral hospitals. The accused is currently being treated at Bungoma District Hospital as an outpatient. If he is released on bond the accused will continue being treated in similar medical facilities. The court is not convinced that the medical care provided by G.K. Prison, Bungoma is inadequate. It has not been denied that the accused was assaulted by close family members who are still bitter due to the killing of their loved one. It is likely that the family could revenge on the accused if he goes back home before the hearing and disposal of the case. Article 49 does

not grant an arrested person an absolute right to be released on bond. It leaves the matter at the discretion of the court in cases where the court has compelling reasons not to release the accused. In the case before me the fact that the life of the accused is in danger due to the likely revenge by the family members. To the court this is a compelling reason why the accused should not be released on bond. It is therefore appropriate that the accused remains in prison custody until the case is heard and determined.

The court therefore declines to grant the application for bail. This case to be given a hearing date on priority basis.

F. N. MUCHEMI
JUDGE

Ruling delivered in open court this 18th day of May 2011 in the presence of Mr. Kweyu for Murunga for the Applicant.

F. N. MUCHEMI
JUDGE