



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL CASE NO. 13 OF 2009**

**REPUBLIC ..... PROSECUTOR**

**V E R S U S**

**DANIEL SHIKUKU KWOPA ..... ACCUSED**

**R U L I N G**

The accused Daniel Shikuku Kwoba, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The accused was arraigned before this court on 2<sup>nd</sup> June 2009. He pleaded not guilty to the charge. The trial is yet to commence. On 23<sup>rd</sup> May 2011, taking advantage of the Constitution, the accused has applied to be released on bond pending the hearing of the case. The State left the issue for determination by the court since the prosecution had not received the report from the police.

In accordance with the provision of **Article 49(1)(h)** of the Constitution, the accused have applied to be granted bail pending the hearing and determination of the case. They have pleaded with the court to be granted reasonable bail terms. The State did not oppose to the accused being granted bail. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic [1986] KLR 600**. The said principles include the nature of the offence, the strength of the evidence, the character or behaviour of the accused and the seriousness of the punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exist which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor which the court shall take into consideration is whether the accused shall interfere with the witnesses if he is released on bail.

In the present application, whereas the accused is facing the serious charge of murder, unless there are compelling reasons, the Constitution grants him the right to be released on bond pending the hearing and determination of the criminal that is facing him. No reasons have been put forward by the prosecution to make this court deny the accused bond. He shall therefore be released on bond pending the hearing and determination of this case.

The accused shall be released on bond of KShs.2 million with two sureties of the same amount. The sureties shall be approved by this court.

**DATED AT KAKAMEGA THIS 22<sup>ND</sup> DAY OF JUNE 2011.**

**L. KIMARU  
J U D G E**