

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO.53 OF 2008

REPUBLIC PROSECUTOR

V E R S U S

FRANKLINE AKHULUNYA ONEKHA 1ST ACCUSED

JACKSON ONDARI SHIRISI 2ND ACCUSED

R U L I N G

The accused, Frankline Akhulunya Onekha and Jackson Ondari Shirisi, are charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. When they were arraigned before court, the accused pleaded not guilty to the charge. The trial has already commenced. Three witnesses have already testified. If the accused are convicted, they shall be sentenced to death.

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.

In the present application, the accused have been charged with the serious offence of murder. This court takes judicial notice of the fact that although the accused are presumed innocent until otherwise proven guilty, the security of the accused may be at risk if the community that they come from would not accept them back if they are released on bail pending the hearing and determination of this case. Since the State has not opposed to the accused being released on bail, and since it appears that there is little risk that the accused will abscond if released on bail pending the hearing of this case, this court will grant bail to the accused pending the hearing of this case.

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

DATED AT KAKAMEGA THIS 22ND DAY OF JUNE 2011

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