



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL CASE NO. 8 OF 2008**

REPUBLIC ..... PROSECUTOR

V E R S U S

WYCLIFFE MAKOKHA KASALA ..... ACCUSED

**R U L I N G**

The accused Wycliffe Makokha, was charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. When the accused was arraigned in court on 9<sup>th</sup> April 2008, he pleaded not guilty to the charge. The trial has yet to commence. On 24<sup>th</sup> May 2011, taking advantage of the new **Constitution**, the accused applied to the court to be released on bail pending the hearing of the criminal case facing him. The State did not object to the accused's application to be released on bail.

In accordance with the provision of **Article 49(1)(h)** of the **Constitution**, the accused applied to be granted bail pending the hearing and determination of the case. He pleaded with the court to be granted bail on reasonable 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 that this court will take into account is whether the accused will interfere with witnesses if he is released on bail.

In the present application, while it is true that the accused has been charged with the serious offence of murder, the law presumes him innocent until proven guilty during trial. This court is aware that the accused stands the risk of not being accepted in the community where he comes from if he is released on bond. However, since the prosecution does not object to his release on bond, the prosecution must be satisfied that the accused will not be a danger to the society that he comes from.

In the premises therefore, the accused shall be released on bond of KShs.2 million together 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**