

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 7 OF 2005

REPUBLIC.....PROSECUTOR

V E R S U S

ZABLON SHIKUNZI.....1ST ACCUSED
JOSEPH INDECHE.....2ND ACCUSED
JOSHUA MBOYA.....3RD ACCUSED
PIUS MOTOKA LUMUMBA.....4TH ACCUSED
PATRICK SHIKANGA LIKHOTIO.....5TH ACCUSED
JOHN IMBUKA OLULU.....6TH ACCUSED

R U L I N G

The 2nd accused was convicted of the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He was sentenced to death as is mandatory provided by the law. The 2nd accused has lodged an appeal to the Court of Appeal challenging his conviction and sentence. He has filed an application pursuant to **Article 49** of the **Constitution** that he be released on bail pending the hearing of his appeal. In the application, he claimed that his appeal has a high chance of success because he was unlawfully convicted and sentenced to serve an illegal sentence. The application is supported by the annexed affidavit of Joseph A. Indeche, the 2nd accused.

During the hearing of the application, the 2nd accused urged the court to release him on bail pending the hearing of his appeal because he needed to get out so that he can take care of members of his family as he awaits the hearing of his appeal. Mr. Limo for the State opposed the 2nd accused being released on bond pending the hearing of the appeal on the ground that due to the fact that the 2nd accused had been convicted and sentenced to death, the likelihood of him absconding was high. He urged the court to reject the application.

This court has carefully considered the rival arguments put forward in this case. **Article 49(1)(h)** of the **Constitution** grants the right to an accused person to be released on bail or bond pending the hearing and determination of his case or his appeal. There are principles which this court must consider before it can grant the 2nd accused bond pending appeal. The court must assess the likelihood of the applicant absconding if he is released on bond. It must also evaluate if there are any exceptional circumstances that will militate against the applicant being released on bond. In the present application, it is clear that the chances of the 2nd accused absconding, if he is released on bond, are very high. This is because the 2nd accused has already been convicted and sentenced to suffer the harshest of any punishment available in our statutes, the sentence of death. Having read the judgment of the court, this court is unable with absolute certainty, agree with the 2nd accused that his appeal has overwhelming chances of success.

In the premises therefore, this court finds no merit with the 2nd accused's application to be released on

bail pending the hearing of his appeal. The application is denied. The 2nd accused shall remain in custody pending the hearing and determination of his appeal to the Court of Appeal.

DATED AT KAKAMEGA THIS 28TH DAY OF JULY 2011

L. KIMARU
J U D G E