

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE NO. 16 OF 2011

REPUBLICPROSECUTOR
V E R S U S
ASUMAN MAKOKHA ECHESA1ST ACCUSED
CHERESTINE NEKESA MAKOKHA2ND ACCUSED
CAROLYNE ATIENO MAKOKHA 3RD ACCUSED

R U L I N G

The accused persons were charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. When the three accused persons were arraigned before this court, the pleaded not guilty to the charge. This case is set for hearing on 19th September 2011. Meanwhile, pursuant to **Article 49(1)(h)** of the **Constitution**, the accused have applied that they be released on bond pending the hearing and determination of the case. Mr. Masiga for the accused submitted that the 2nd and 3rd accused persons have with them young children in custody. He urged the court to take into consideration the fact that the circumstances under which the said children are currently being brought up is not conducive. Mr. Limo for the State opposed the accused persons being released on bond. He submitted that there was a likelihood that the accused would abscond and not attend the court proceedings when the case is scheduled to be heard.

In accordance with the provision of **Article 49(1)(h)** of the **Constitution**, the accused has applied to be granted bail pending the hearing and determination of the case. They have 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 pending the hearing of the criminal case 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 exists which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused persons will interfere with witnesses if they are released on bond. This is taking into consideration the fact that if the accused persons are convicted, they will be sentenced to death.

Having carefully considered the accused persons' application, this court is of the view that the circumstances under which the offence is alleged to have been committed are such that the accused persons are entitled to be released on bail. This court is not oblivious of the fact that the accused persons security may be at risk if the community they come from do not accept them back if they are released on bail. However, since the law presumes the accused persons innocent until proven guilty, they shall be released on bail pending the hearing of the case. The State was opposed to the accused persons being released on bail but for the reasons stated above, this court is constrained to grant bail to the accused person.

Each accused is released on bond of KShs.1,000,000/= with one surety of a similar amount. The sureties shall be approved by this court.

DATED AT KAKAMEGA THIS 27TH DAY OF JULY 2011

L. KIMARU
J U D G E