

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 39 OF 2009

REPUBLIC PROSECUTOR

V E R S U S

WILLIAM WEKHULO TORONI 1ST ACCUSED

FLORENCE WEKHULO TORONI 2ND ACCUSED

GLADYS AMANYA WAKHULO 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 accused persons were arraigned before this court on 22nd September 2009, they pleaded not guilty to the charge. The trial commenced on 13th July 2010. So far the court has heard five witnesses. The next hearing date is scheduled for 14th November 2011. Miss Andia, counsel for the 2nd accused made an application for the 2nd accused to be released on bond pending the hearing and determination of this case. She submitted that the 2nd accused was a minor aged 17 years. She stated that the 2nd accused was a standard 8 candidate and was unlikely to abscond if she was released on bond. She reiterated that the 2nd accused is unlikely to interfere with the remaining witnesses and would abide by all the conditions set by the court for the grant of the said bond. Mr. Limo for the State in reply stated that although the State was not opposed to the accused being released on bond, the bond application had been brought late in the day. This is because the prosecution had only two witnesses remaining to testify.

In accordance with the provision of **Article 49(1)(h)** of the **Constitution**, the 2nd accused has applied to be granted bail pending the hearing and determination of the case. She has pleaded with the court to be granted bail on reasonable terms. The State did not oppose to the 2nd 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 following; 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 the court will consider is whether the accused will interfere with witnesses if she is released on bond. This is taking into consideration the fact that if the accused is convicted, they will be sentenced to death.

This court has carefully considered the 2nd accused's bail application. The 2nd accused is a child within the meaning of **Section 2** of the **Children Act**. Infact, she ought to be referred to as a subject. She is a school going child. According to her advocate, she will be sitting her standard 8 examination this year. This court wonders how the subject was registered to sit for examination as a standard 8 candidate yet she was arrested last year. However, it could be possible that she was registered in prison to sit for her standard 8 examination. The State is not opposed to the subject being released on bond pending the hearing of this case. This court has taken into consideration that, being a child, the subject (2nd accused) is unlikely to interfere with the remaining witnesses. The court will also give her a chance to continue with her education as she awaits trial.

The subject (2nd accused) is therefore released on bond of KShs.500,000/= together with one surety of the same amount. The surety shall be approved by this court.

DATED AT KAKAMEGA THIS 19TH DAY OF JULY 2011.

L. KIMARU
J U D G E