

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO.20 OF 2010

REPUBLIC PROSECUTOR

V E R S U S

EDWIN WIJENCHE 1ST ACCUSED
PETER JOSHUA LIMINAJI 2ND ACCUSED
EDWIN MATSAVELO ANYULA 3RD ACCUSED
EDWIN MMAYI ADOVE 4TH ACCUSED

R U L I N G

The four 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 were arraigned before this court on 18th October 2010, they pleaded not guilty to the charge. The trial is yet to commence. Pursuant to the provisions of **Article 49(1)(h)** of the **Constitution**, the accused persons have applied to be released on bond pending the hearing and determination of the case. Mr. Aburili for the accused submitted that the 1st, 3rd and 4th accused ought to be released on bail because they were willing to abide by the terms that the court may impose for their release on bail. He further submitted that the accused will attend court during the scheduled hearing date. It was his case that the accused persons were not a flight risk because their residence was well known. He urged the court to take into consideration that the accused persons were peasant farmers and therefore the court ought not to grant onerous bond terms. The State did not object to the accused persons being released on bail on condition that the court imposes such terms that will secure the accused attendance to court during the hearing of their case.

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 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 following; 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 persons are found guilty of the offence. The primary underlying consideration is whether the accused persons will turn up at the appointed place and time for their trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused persons existed which when weighed against the risk of the accused persons 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 of course taking into consideration the fact that if the accused are convicted, they will be sentenced to suffer death.

Having carefully considered the application by the accused persons to be granted bail, this court is of the opinion 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. However, in view of the serious nature of the offence facing the accused persons, the court will impose bail terms that will secure their attendance to court during trial. This court is not oblivious of the fact that the law presumes the accused persons innocent until proven guilty.

In the circumstances therefore, each accused shall be released on bond of KShs.1,000,000/= together with

two sureties of the same amount. In the alternative, each accused may post cash bail of KShs.500,000/=. The sureties will be approved by this court.

DATED AT KAKAMEGA THIS 19TH DAY OF JULY 2011

L. KIMARU
JUDGE