



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL CASE NO. 19 OF 2008**

**REPUBLIC .....**

**PROSECUTOR**

**V E R S U S**

**JOSEPH CHITERI .....**

**ACCUSED**

**RULING**

The accused has applied to be released on bail pending the hearing and determination of the murder charge facing him. The accused is of the opinion that the circumstances in which the offence is alleged to have been committed favours his being released on bail pending the hearing of the case. He argued that any tension that was apparent on the ground has eased since his arrest and detention. The accused was of the view that the grant of bail is a constitutional right which should not be denied to him. The accused told the court that he would abide by any bond terms that the court may issue. Mr. Orinda for the State was opposed to the accused being released on bond. He submitted that the circumstances which the accused is alleged to have killed the deceased related to a land dispute. He was of the view that the accused would interfere with witnesses if he is released on bond.

This court has carefully considered the rival facts in this case. 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.

In the present application, it was evident that the circumstances under which the accused is alleged to have committed the offence are such that there is a strong possibility that the accused will interfere with the witnesses if he is released on bond. The charge facing the accused is the serious offence of murder. The accused is more likely than not to be tempted to interfere with the witnesses in view of the gravity of the charge facing him. In the circumstances therefore, this court is of the opinion that the accused's application for bond is not merited. It is hereby dismissed.

**DATED AT KAKAMEGA THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2011**

**L. KIMARU  
J U D G E**