

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE 14 OF 2009

REPUBLIC PROSECUTOR

V E R S U S

PIUS WAEME OKUMU 1ST ACCUSED

WYCLIFFE SAKA KASAMANI 2ND ACCUSED

LADISTA SAKA KASINYO 3RD ACCUSED

STEPHEN BOYO KASINYO 4TH ACCUSED

R U L I N G

The four accused persons have applied to be released on bail pending the hearing of the criminal charge of murder facing them. The accused persons have invoked the provisions of **Article 49(1)(h)** of the **Constitution** in support of their application. They submitted that there were no compelling reasons why they should not be released on bail. They undertook to abide by the terms of bail that would be imposed by the court if they are released on bond. In particular, they reiterated that they will not interfere with witnesses, neither is there any danger that will abscond if they are released on bond. As a guarantee that they would not pose a security risk if they are released on bond, they submitted that their place of residence is within a walking distance of the Administration Police Camp at Shianda.

Mr. Orinda for the State opposed the application for bail. He submitted that there were compelling reasons to deny the accused bond. He submitted that prior to their arrest, the accused had gone underground. It took a long time for the accused to be traced and arrested after the commission of the offence. He was of the view that there would be no guarantee that the accused will attend court if they are released on bond. He submitted that there was a high likelihood that the accused persons would abscond if they are released on bond.

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 rival arguments of the accused persons and the prosecution. It was clear to this court that the circumstances of the arrest of the accused persons militates against them being released on bond. The likelihood that the accused persons will abscond upon being released on bond is very high. This is in view of the fact that the accused persons are facing the serious charge of murder. In the circumstances therefore, this court finds no merit with the accused persons application for bail. The same is dismissed.

DATED AT KAKAMEGA THIS 22ND DAY OF SEPTEMBER 2011

L. KIMARU
JUDGE