



CRIMINAL

Ø Bail pending trial under Article 49(i) (h) of the Constitution

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CR. CASE NO. 20 OF 2010

REPUBLIC STATE COUNSEL

VERSUS

ZACKARIA MITHIKA ACCUSED

RULING

The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are as follows:- *Zacharia Mithika: On 19th day of March, 2010 at Shauri Trading Centre, Mbeu Location, in Tigania West District within Eastern Province murdered Julia Kanini.* The accused pleaded not guilty to the offence. His learned counsel Mr. Kaimenyi on 4th October 2010 sought the release of the accused on bail pending trial. In making that application, he relied on Article 49 (1) (h) of the constitution. Article 49 (1) (h) provides an arrested person has the right –

“(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

The application was opposed by the learned state counsel Mr. Kimathi. In his opposition, learned state counsel stated that the accused, after the offence was committed, run away from home. The deceased was his wife. The accused, according to Mr. Kimathi, on running away from his home left his children unattended. The probation officer presented a pre-bail report before court. The probation officer found the accused unsuitable for bail. The probation officer in interviewing family members of the accused and people from his community, found that the accused was said to have been often involved in anti social conduct. He even had previous disagreement with his father. Since he was remanded in respect of this offence, no family member had been to see him. The right to bail pending trial is provided under Article 49 (1) (h). Article 49 (1) (h) provides an arrested person has the right –

“(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

It is clear from that provision that an accused person has a right to be released on bond or bail unless there are compelling reasons why he should not be released. The accused in this case is reported by his family members and the community to be of anti social conduct. It is stated that he often fought in public with his wife who is the deceased in this matter. He is also said to often indulge in illicit liquor. It is for those reasons that I find there are compelling reasons why the accused should not be released on bail. The accused faces the offence of murder. If convicted, he will be sentenced to death. With that in mind, there is a likelihood of the accused absconding from his trial. For that reason, I reject his application for bail pending trial.

Dated and delivered at Meru this 22nd day of October 2010.

MARY KASANGO
JUDGE