



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. 19 OF 2010

REPUBLIC STATE COUNSEL

VERSUS

EUSTACE BUNDI RUFUS ACCUSED

RULING

The appellant 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:- *Eustace Bundi Rufus; on the 26th day of March, 2010 at Gitombani sub-location, upper Murugi Location in Maara District within Eastern Province murdered Danstan Njeru Ndubi.* The accused on 13th May 2010 pleaded not guilty of the offence. On 4th October 2010, his counsel Mr. Kaimenyi applied for bail pending trial under Article 49 (1) (h) of the Constitution. In making the application, he stated that the accused would abide by the bail terms set by the court. The court requested for a probation report to be prepared by a probation officer to assist the court make a decision on the accused application. The probation officer interviewed family members on the accused and of the deceased. All the persons that were interviewed by the probation officer had positive response about the accused being released on bail. The accused employer also volunteered to stand surety for the accused if released on bail. The deceased was stated to be the accused first cousin. The deceased only surviving parent, his mother stated that she would be happy if the accused was released on bail. The probation officer noted in the report that the accused had no previous criminal record. She therefore recommended that the accused be released on bail. 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.”

That right to bail pending trial was introduced by the constitution promulgated on 27th August 2010. For the first time accused persons facing capital offences now have a right to be released on bail pending trial unless there are compelling reasons for not releasing them on bail. The application made by the accused has weighed heavily on my mind because of the offence that the accused faces. The accused is charged with the offence of murder. If convicted, the accused stands to be sentenced to death. In my view, that is an incentive to abscond from trial. It is also stated by the probation officer that the deceased was a first cousin of the accused. It probably therefore means that the witnesses who the state intends to call are close family members. However, balancing the rights of the accused as provided in the Constitution and the facts which are before me, I am of the opinion that the accused can be released on bail pending his trial. It should be noted that the learned Assistant Deputy Public Prosecutor Mr. Musau oppose bail. In view of the serious offence the accused faces, I grant bond to the accused pending his trial of Kshs. 6 million and a surety of similar amount. This case shall be mentioned on for purpose of fixing a hearing date.

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

MARY KASANGO
JUDGE