

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 60 OF 2007

**REPUBLIC.....PROSECUTOR
VERSUS**

MOSES KENU OLE PEMBA.....ACCUSED

RULING

Mr. Cheche, learned counsel for the accused has applied for release of the accused on bond/bail, pending his trial. Counsel relied upon the provisions of Section 49(1)(a) of the Constitution which requires that any accused who is charged with an offence punishable by imprisonment for not less six months should be released on bond/bail - unless there are compelling reasons for denying the accused that right.

Mr. Cheche submitted that there are no precedents on this question, and wanted this court to set such precedent by releasing the accused.

I am unable to fall into the temptation of releasing the accused on bond/bail pending his trial. My reasons are the following.

The accused is charged with a capital offence. Under Section 72(5) of the repealed Constitution, no person accused of murder, treason, and other capital offences was to be released on bail.

Currently under Section 123 of the Criminal Procedure Code, the courts are prohibited from granting bond/bail to any person who is charged with offence of murder, treason, robbery with violence or attempted robbery with violence and I would add a further category, persons charged terrorism or offences of mass killings. In my opinion these are all compelling reasons why an accused such as the applicant in this case ought not to be released on bail pending his trial.

There are also subsidiary reasons why an accused facing charges for which punishment is death ought not to be granted bail - unless there are exceptional circumstances, such that the accused is a child - who under the Children Act, cannot be sentenced to death. In addition society does not condone the taking away of human life, and the pleasure of mixing with the accused in streets. Such a person may well become a victim of his own freedom and release may lead to serious breaches of the peace.

For those reasons, I am unable to grant the application to release the accused on bond/bail pending appeal.

Dated, signed and delivered at Nakuru this 11th day of October 2010

**M. J. ANYARA EMUKULE
JUDGE**