



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CRIMINAL CASE NO. 97 OF 2010**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**GERALD IRUNGU.....ACCUSED**

**RULING**

Mr Kipkoech has applied to this court for admission to bail of the accused under Section 49(i)(h) of the Constitution under which the right to bail is automatic unless there are compelling reasons for denying an accused bail/bond.

Mr. Nyakundi objected to the application and submitted that the same ought to be brought by way of a formal application to enable the Investigating Officer to submit grounds/reasons which could constitute compelling grounds for denial of bail.

I have considered the respective arguments by counsel. Indeed a formal application for bail/bond would avail the prosecuting authority time to submit by way of an affidavit cogent grounds why an accused person ought not to be admitted to bond/bail.

In the Constitution of the Second Republic any accused person who is charged with

an offence punishable by imprisonment of less than six months is entitled as right to bond/bail and the court has no discretion on the matter.

For persons charged with offences punishable by imprisonment for a term more than six months, the grant of bail/bond is not automatic.

Secondly, for these grave offences, the prosecuting authority must show compelling reasons why the accused ought not be admitted to bail/bond.

Under Section 72(5) of the repealed Constitution, no person who was charged with an offence punishable by death was allowed to be admitted to bail. This provision does not exist in the new Constitution.

However Section 123(1) and 123(4) of the Criminal Procedure Code, prohibited and prohibits this court from admitting any person to bond/bail if he was charged with the offence of murder, treason, robbery with violence or alleged robbery with violence. These provisions may now be regarded as inconsistent with the new Constitution but until they are so declared they still constitute compelling reasons why an accused person should not be admitted to bond/bail.

The underlying reason for this is both philosophical and societal. It is the philosophy of all civilized nations that malefactors of all types and more so those accused of taking away sacred human life must not be allowed to walk and breath the air with other citizens whose kin they have smoked away their lives.

The courts will be failing in their duty if they allowed known killers to strut around in the streets. Their own safety will not be guaranteed and violence by way of revenge may spiral to uncontrollable levels.

These are therefore, in my humble view, compelling reasons why the accused charged with the offence punishable by death ought not to be admitted to bond/bail.

The application by Mr. Kipkoech is therefore denied.

There shall be orders accordingly.

**Dated and signed at Nakuru this 1<sup>st</sup> day of October, 2010**

**M. J. ANYARA EMUKULE**

**JUDGE**