REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS
HIGH COURT CRIMINAL CASE 54 OF 2004

REPUBLIC :: PROSECUTOR
VERSUS
LKM (a Minor) :: ACCUSED

R U L I N G

Mr Kakonzi counsel for the subject minor applies that the subject be released on bond pending the hearing of this case under the provisions of Rule 12 (3) of the 5th schedule to the Children's Act. He contends that under the Children's Act there is requirement for recognizance or surety.

The learned state counsel did not oppose the application for release of the minor on bond save that the court do consider ordering that he be released on conditions to ensure attendance.

The minor faces a very serious charge of murder which is not normally bailable for the adult offenders.

The minor is said to have been held since 8/12/03. He only appeared before this court on 27/5/04 about 6 months after arrest. It is now a year since this incarceration. Rule 12 (3) of the Children's Act provides that remand period for a child charged with a serious offence shall be 6 months. In the present case I believe the period of remand should commence from the date the minor appeared before this court which is on 27/5/04. It is now 6 months since the court remanded him. It is only fair that he be released on bond.

Unlike Mr Kakonzi's submissions that no recognizance is required is under this Act, that is not the position. Rule 9 provides that the court will release the child on such terms the court may deem appropriate.

It is, therefore, in the discretion of this court impose terms or not, depending on the circumstances of each case. In the present case, this being a murder charge, the court has to ensure the child's court attendance by ordering that he may be released on his own personal bond of 75,000/= plus 2 sureties of like sum.

Dated at Machakos this 20th day of December 2004

R.V. WENDOH

JUDGE