



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E046 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

JOSHUA PAMBA BARASA.....ACCUSED

RULING

1. **JOSHUA PAMBA BARASA**, is charged with the offence of murder. He pleaded not guilty and by his application dated 30th September, 2021 he has applied to be released on released on bond/bail pending his trial.
2. **Article 49(1)(h)** provides for an arrested person to be released on reasonable conditions pending charge or trial unless there are compelling reasons not to be released.
3. The accused is facing a serious charge which has the potential sentence of death on conviction. The court in considering a bail application needs to bear in mind the offence the accused faces. This is what was stated in the case **REPUBLIC VS. AHMED MOHAMMED OMAR & 6 OTHERS (2010) eKLR** thus:-

“... whereas the applicant is still presumed innocent; if he were to be convicted for murder, there is a possibility that the trial court could sentence him to death. To my mind, therefore, the severity of the sentence remains a significant factor for consideration in an application for bail pending trial.”

4. I have considered the pre-bail report which states that the accused comes from *Busia Teso* and was in the *Kikuyu, Kiambu* County area because of the work he did there. On being granted bail it is important for the accused to assure the court that he will attend court when required. This was the holding in of the case of **REX VS. HAWKEN (1944) 2 DLR 116** as per *Farriss C.J.*, thus:-

“The question of bail is sometimes misunderstood. When a man is accused he is nevertheless still presumed to be innocent and the object of keeping him in custody prior to trial is not on the theory that he is guilty but on the necessity of having him available for trial. It is proper that bail should be granted when the Judge is satisfied that the bail will ensure the accused appearing at his trial.”

5. Bearing in mind the above, I grant the following orders:-

- (a) **JOSHUA PAMBA BARASA** is granted bond of Kshs.2 million with two sureties of similar amount.
- (b) **JOSHUA PAMBA BARASA** shall not interfere with the witnesses.

6. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Maurice

For DPP :- Ms. Kathambi

For Accused :- Mr. Ajulu

Accused : **JOSHUA PAMBA BARASA:-**

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE