



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL CASE NO.35 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ZABLON KIPKEMOI KIRUI.....1<sup>ST</sup> ACCUSED**

**GILBERT CHERUIYOT KEMBOI.....2<sup>ND</sup> ACCUSED**

**RULING**

1. Before me is a Notice of Motion dated 5<sup>th</sup> March 2019 filed under Article 49 of the Constitution by M/s Chelule & Company Advocates on behalf of the two accused persons herein for their release on bail pending trial.

2. The application has grounds on the face of the Notice of Motion and was filed with a supporting affidavit sworn on 5<sup>th</sup> March 2019 by Zablun Kipkemoi Kirui, the 1<sup>st</sup> accused.

3. The prosecution through the Assistant Director of Public Prosecutions, Mr. Ayodo did not object to the application as they have no compelling reasons upon which to oppose the same.

4. Counsel for the accused persons Ms Cheruiyot in prosecuting the application stated that the 1<sup>st</sup> accused was a family man in Kericho County and that his clan elders were willing to provide security if released on bail. As for the 2<sup>nd</sup> accused, counsel stated that he was a minor, and unlikely to escape from this court's jurisdiction.

5. Under Article 49 of the Constitution of Kenya 2010, every arrested person has a right to be released on bail/bond on reasonable terms unless there exist compelling reasons for the denial of bail. Article 49 (1) (h) specifically provides as follows:-

*“49 (1) 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.”*

6. Courts have held that the primary responsibility is on the State to demonstrate the existence such compelling reasons. The State says herein that they do not have compelling reasons to justify any opposition to the grant of bail or bond. I myself find no compelling reasons for denial of bond.

7. I thus allow the application dated 5<sup>th</sup> March 2019 and order as follows:

**1. Each of the two accused persons will be released on signing his own bond of Kshs.200,000/- with one surety of similar amount.**

**2. In the alternative, each accused person will be released on payment of cash bail of Kshs.300,000/-.**

**3. The accused will not interfere with prosecution witnesses.**

**4. The accused will each attend court on every date for mention and hearing of the case, until the case is finalized.**

**Dated and delivered at Kericho this 16<sup>th</sup> day of October 2019.**

**George Dulu**

**JUDGE**