



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT GARISSA**  
**CRIMINAL APPEAL NO. 5 OF 2015**  
**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**ABDINASIR SHEIKH.....ACCUSED/APPLICANT**  
**R U L I N G**

Before me is a Notice of Motion dated 2nd October 2015 filed by the accused through his counsel Hassan Lakicha & Co. Advocates for bail pending trial. The application was filed under section 123 and 124 of the Criminal Procedure Code Cap 75 of the Laws of Kenya and Article 49 (1) (h) of the Constitution of Kenya.

Counsel for the applicant who is the accused herein, has argued that the applicant comes from a well known family and is not a flight risk. He has also stated that his client has been in custody since March 2015. Counsel has emphasized that his client is entitled to bail and that he is innocent until proved guilty.

After counsel for the applicant closed his submissions in an informal application on 22/09/2015, Learned Prosecuting Counsel Mr. Mwangi informed the court that the investigating officer was bringing to Garissa an affidavit in opposition to the application. He therefore asked for time to obtain that information before coming to court to make submissions. The matter was thus adjourned from 22nd September 2015 to 5<sup>th</sup> October 2015. On the 5th of October 2015, a formal application for bail was filed, and Mr. Mwangi asked for another adjournment which was granted to 8th October 2015.

Today being 8th October 2015, Mr. Mwangi has informed the court the he has not received the said affidavit nor has he seen any of the investigating officers. He thus submitted that the state or prosecution was not in a position to oppose the bail application. He however emphasized that the applicant or accused comes from a place called Ramu in Mandera and as such it would be necessary to require that he reports monthly to the CID office at Ramu. Mr. Mwangi also informed the court that he had received information that the applicant is not in good health and needed to be hospitalized.

In response Mr. Lakicha for the applicant stated that his client had been in custody since March 2015 and that it took several months before he was charged in court. He stated that his client was suffering from Anaemia. He urged this court to grant his client reasonable bond terms. He stated that his client had no objection to reporting to the CID at Ramu. He stated also that in fact his client required to undergo blood transfusion.

This is an application for bail pending trial. Under Article 49 (1) of the Constitution of Kenya, every arrested person has a right to be released on bond or bail unless there are compelling reasons not to do so.

The state does not oppose the grant of bail in the present case. I myself do not know of any compelling reasons which would militate against the grant of bail.

In granting bail, this court has a duty to give such terms as to ensure the accused will attend court. Such terms should not however be unduly burdensome to the accused. Considering the facts and circumstances of this matter, I allow the application and order as follows:-

1. The accused may be released on signing his own bond of 1million shillings with one surety of similar amount or in the alternative he may be released on paying a cash bail of Kshs. 800,000/=.
2. He will report to the CID office at Ramu once every calendar month.
3. He will not interfere with prosecution witnesses.
4. He will attend every mention and hearing of the case.
5. In view of what I have been informed about the health condition of the accused, I order that if he is in custody then the prison authorities should immediately arrange for him to undergo medical treatment and blood transfusion.

**Dated and delivered at Garissa this 8th day of October, 2015**

**GEORGE DULU**

**JUDGE**