



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CRIMINAL CASE NO. 14 OF 2019**

REPUBLIC.....PROSECUTOR

VERSUS

PAUL NDUNG'U KAHIRA.....1<sup>ST</sup> ACCUSED

JOSPHAT NG'ANG'A MURATHA.....2<sup>ND</sup> ACCUSED

MOSES EBONGON LOKADEL.....3<sup>RD</sup> ACCUSED

GEORGE MUSYIMI KALUKU.....4<sup>TH</sup> ACCUSED

MARANGA JOEL STEVES.....5<sup>TH</sup> ACCUSED

**RULING**

1. All the accused pray for *bail* pending trial.
2. There are five *pre-bail reports* in respect of each accused person filed on 23<sup>rd</sup> July 2019 recommending that they all be granted bond.
3. The application is *not* contested by the Republic.
4. The accused is deemed *innocent*. Under **Article 49 (1) (h)** of the **Constitution**, he is entitled to bail pending trial *unless* there are *compelling* circumstances.
5. The overarching objective of bail is to ensure the accused *attends* his trial. ***Muraguri v Republic*** [1989] KLR 181.
6. Other relevant considerations include the nature of the charge; the likely sentence; previous criminal records, the *views* of the *family of the victim*, the possibility of interference with witnesses; the temptation to abscond; and, the safety of the accused.
7. The accused face a grave charge of *murder*. The Director of Public Prosecutions informs the High Court that on the night of 20<sup>th</sup> and 21<sup>st</sup> April 2019 at Delmonte Farm in Gatanga Sub-County within Murang'a County, the accused jointly with others not before the court, murdered Bernard Murigi Wanginye *alias* Wamau.
8. I have taken into account that the probation service recommends their release on bond. But from the part of the charge that I have highlighted above, it is obvious that other suspects are at large. From the committal bundle filed in court, the accused are all employed as guards at the farm. The deceased is alleged to have been in a group of about forty persons who attempted to steal pineapples from the farm. They were cornered or attacked by the guards.
9. There are two other concerns. The first relates to *security*. In two of the pre-bail reports on the 1<sup>st</sup> and 2<sup>nd</sup> accused prepared by Mr. Irungu, it is stated-

*“The local administration indicated that after the incident members of the local community from the deceased [sic] community staged a demonstration against the Delmonte Farm and some farm property was destroyed. The situation was calmed by the police and local administration”.*

10. Secondly, all the pre-bail reports tend to *down play* the concerns of the victim's family. The **Victims Protection Act 2014** requires the views of victim's family to be taken into account at this stage. The father of the deceased, Gilbert Wanginyi, has expressed anguish at the loss of his young son. He does not know any the accused or the persons who killed his son. I appreciate his bitterness and angst for the death of his son.

11. For all of those reasons bail is *denied*. In the interests of justice I direct that the trial be fast-tracked. The Deputy Registrar shall grant a hearing date on *priority*.

It is so ordered.

**DATED, SIGNED and DELIVERED** at MURANG'A this 25<sup>th</sup> day of July 2019.

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

Accused.

Ms. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.