



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO 33 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PETER NGUGI GICHOHO.....ACCUSED**

**RULING**

1. The accused herein, **Peter Ngugi Gichoho**, is charged with *murder* contrary to **section 203 as read with section 204** of the *Penal Code*. It is alleged in the information dated 01/10/2015 that on 06/01/2014 at Gakuyu Village, Wanjengi Sub-location within Murang'a County he murdered one James Kiunjuri Gichoho.

2. On 01/10/2015 the Accused pleaded not guilty to the charge. His trial is scheduled to commence on 05/07/2017. In the meantime he has sought to be admitted to bail by notice of motion dated 12/11/2015. The Republic has opposed bail by a replying affidavit sworn by one IP Bernard Juma, the investigating officer of the case, and filed on 10/10/2016. He has deponed, *inter alia*, that the Deceased was the Accused's brother; that an important witness for the prosecution, Suleiman Njoroge Gichoho, is also a brother of the Accused; that another witness, Esther Waruini Gichoho, is a step-mother of the Accused; that the Accused, the Deceased and the witnesses lived in the same compound; and that should the Accused be released on bail the witnesses will be in fear of their lives "since the Accused has a history of violence"

3. I have considered the submissions of the learned counsels appearing. I have also perused the file of witness statements and other documents supplied to the Accused as well as to the court by the prosecution.

4. Bail pending trial is now a constitutional right for all offences that will be denied only for compelling reason. Any conditions for such bail the court might impose must, again by constitutional edict, be reasonable. For all this see **Article 49(1) (h)** of the *Constitution of Kenya, 2010*.

5. The Deceased, Accused and one important witness of the prosecution are brothers. Another important witness is their step-mother. They all live in the same compound. The two witnesses have stated through the investigating officer, that they will be in fear for their lives should the Accused be released on bail and join them at home.

6. I have noted the circumstances in which the alleged offence was committed, and it does appear that the fear of violence on the part of the witnesses should the Accused be released on bail is not far-fetched and is in fact real. In reaching this conclusion I remind myself that the Accused has not been tried and found guilty, and must be presumed innocent at this stage. But I consider that the possibility of the Accused interfering with witnesses through either violence or threat of violence is compelling enough to warrant denying him bail.

7. In the circumstances bail is refused. The Accused shall remain in custody until conclusion of his trial. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 23<sup>RD</sup> DAY OF FEBRUARY 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 24<sup>TH</sup> DAY OF FEBRUARY 2017**