



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CRIMINAL MURDER NO. 4 OF 2013**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**SAMUEL MUGO KIMOTHO**

**DUNCAN KARIMI NGOTHO**

**CYRUS MWANIKI MACHARIA.....ACCUSED**

**RULING**

1. The 1<sup>st</sup> accused Samuel Mugo Kimotho filed application dated 16<sup>th</sup> March, 2017 brought under Article 49 (1) H and Article 2 of the Constitution seeking an order that the Court be pleased to grant the applicant bond pending the finalization of his trial.
2. The application is based on the grounds that the applicant has been in custody for more than three years and the trial has not been finalized. That he is presumed innocent until proven guilty and that right to bail pending trial is a constitutional right which an accused person should not be denied unless there are compelling reasons to deny him bail.
3. The application is supported by the affidavit of the applicant Simon Mugo Kimotho sworn on 16<sup>th</sup> March, 2017 which I have considered.
4. The State through Mr. Sitati prosecution counsel, informed the Court that they have no objection to the application.
5. Similar applications were filed by Duncan Karimi Ngoto, the 2<sup>nd</sup> accused and Cyrus Mwaniki Macharia the 3<sup>rd</sup> accused. The applications are supported by their respective affidavits.
6. The State through the prosecution Counsel Mr. Sitati did not oppose the applications. The ruling to apply to the three accused.
7. I have considered the applications. Bail as submitted by the applicants is a constitutional right donated by Article 49 (1) (h) of the Constitution. The offence for which the accused stands charged is bailable. Bail can only be denied if the State proves that there are compelling reasons which will make the court to order that bail be denied. Article 49 (1) (h) provides:-

***“An arrested person has the right:-***

***To be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”***

There is no compelling reason given by the State. I find that the accused persons are entitled to be released on bail. In granting the bail, the Court considers that the accused are charged with a very serious offence. I order that each accused person shall be released on a bond of Ksh.3,000,000/- each plus one like surety each to appear for the trial or else will continue to be remanded in custody until the case is heard and determined.

***Dated and delivered at Kerugoya this 31 day of March, 2017.***

**L. W. GITARI**

**JUDGE**

Read out in open Court in the presence of M/S Kiarie prosecution counsel for State, Accused, Mr. Abubakar for Accused and Mr. Mbogo court assistant this 31<sup>st</sup> March, 2017.

L. W. GITARI

JUDGE

31.3.2017