



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NANYUKI**  
**CRIMINAL CASE NO. 11 OF 2017**

REPUBLIC.....PROSECUTOR

*Versus*

SAMUEL CHEGE NDEGEA.....1<sup>st</sup> ACCUSED

AMOS WAINAINA WILLIE.....2<sup>nd</sup> ACCUSED

GLADYS WAIRIMU MAHINDA.....3<sup>rd</sup> ACCUSED

GEORGE WAWERU KINYANJUI.....4<sup>th</sup> ACCUSED

**RULING**

1. SAMUEL CHEGE NDEGEA (1<sup>st</sup> accused ), AMOS WAINAINA WILLIE (2<sup>nd</sup> accused), GLADYS WAIRIMU MAHINDA (3<sup>rd</sup> accused) and GEORGE WAWERU KINYANJUI (4<sup>th</sup> accused) are charged with the offence of murder. They all pleaded not guilty. They seek bail pending trial.

2. Article 49 (1) (h) provides that 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.”*

3. Justice John M Mativo in the case: **REPUBLIC V DANFORND KABAGE MWANGI [2016] eKLR** discussed the provisions of the afore stated article and held:

*“I hold the view that after considering the circumstances of each case, the court has discretion to grant or refuse bail provided that the discretion is exercised judicially. In Republic vs Milton Kabulit & 60 others [10] Justice Emukule in a well-reasoned decision said:-*

*“My understanding of Section (sic) 49 (1) (g) (h) is firstly, that the right of an arrested person to bond or bail in respect of any offence is solely at the discretion of the court seized of the application. Secondly, the only accused entitled to a right to an automatic bond or bail are those charged with offences (which may be referred to as “petty offences”) the punishment of which {if found guilty and convicted} is either a fine only, or imprisonment for a term of less than six months”.*

4. The Learned Judge in that case **REPUBLIC - V – DANFORND (supra)** also considered conditions that would lead to denial of bail and had this to say:-

***“The “relevant and sufficient” reasons which may permit the accused to be remanded in custody rather than being granted bail (also known as the “grounds for refusing bail”) are limited to: Risk that the accused will fail to appear for trial if they are released on bail:***

***i. Risk that the accused will interfere with the course of justice while on bail(e.g. that he will destroy evidence that could be used against them at their trial or that they could interfere with witnesses who are due to give evidence a their trial):***

***ii. Risk that the accused will commit further offences while on bail;***

***iii. The accused would be at risk of harm (from himself/herself or from others) against which they would be inadequately protected if released on bail; or***

***iv. Risk to the preservation of public order if the accused is released on bail”.***

5. To aid the court in determining the accused’s application for bail I requested the probation office to prepare pre-bail reports.

6. The probation report on the 1<sup>st</sup> accused revealed that he is 43 years old, married with three children who are 12, 8 and 3 years old. He is the sole bread winner of the family. He has resided at Imenti village Sirima Location for 28 years. The probation officer was positive in his recommendation of the 1<sup>st</sup> accused being released on bail.

7. The 2<sup>nd</sup> accused, according to the probation report is a 58 year old family man. He is a father of four children who all depend upon him. The community at Imenti village, Sirima Location is positive with his release on bail.

8. The 3<sup>rd</sup> accused as per the probation report is a lady who is a mother and wife. She has a fixed abode. She has an upright character within her community and her community is positive on her release on bail.

9. The 4<sup>th</sup> accused is an administration police officer. He is described in the report as a person of good character. The community where he lives has no objection with released on bail.

10. The Principal Prosecution Counsel Mr. Tanui did not oppose the bail applications but sought the bail terms be reasonable bearing in mind the offence accused face.

### **DETERMINATION**

11. The accused person have a constitutional right to bail. There being no compelling reason why bail should not be granted, **I order each accused to be released on their own bond of Ksh. 500,000 with two sureties of equal amount for each accused.**

**Dated and Delivered at Nanyuki this 20<sup>th</sup> day of December, 2017**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

1<sup>st</sup> Accused : .....

2<sup>nd</sup> Accused: .....

3<sup>rd</sup> Accused: .....

4<sup>th</sup> Accused: .....

For state: .....

For 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> accused .....

For 4<sup>th</sup> accused .....

Language .....

**COURT**

Ruling delivered in open court

**MARY KASANGO**

**JUDGE**