

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 63 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

KALELU KAVUSUKI.....1ST ACCUSED/APPLICANT

KYAMBI KALELU.....2ND ACCUSED/APPLICANT

MUNEENI MUTHENGI.....3RD ACCUSED/APPLICANT

MWANGANGI MUTEMI.....4TH ACCUSED/APPLICANT

RULING

1. By a Notice of Motion dated **19th February, 2016**, the Applicants (Accuseds) seek bail pending trial. The 2nd Applicant in particular seeks to be released on a free bond.
2. The application is premised on grounds that the Accused persons are charged with the offence of murdering their neighbour in the year **2006**. They were adversely mentioned in the inquest that was heard by the **Mwingi Senior Resident Magistrate in 2007**. As the inquest was ongoing they were out on Personal Bonds. They did not abscond. They are residents of **Kyuso**. The 2nd Accused is a wife of the 1st Accused therefore will not abscond.
3. The application is supported by an affidavit deponed by **Kyambu Kalelu** who reiterated what is stated in the grounds on the body of the application and added that they have children who are in primary school and as a result of their incarceration some of them have dropped out of school.
4. The State through **Ms. Amojong** learned State Counsel did not oppose the application.
5. I do note that bail is a constitutional right unless there are compelling reasons that would require the incarceration of the Accused persons. The paramount consideration being whether the Accused person is a flight risk.
6. There being no reason to warrant the Accused person's incarceration pending trial, I hereby direct as follows:
 - i. Accused 2 may be released on a cash bail of **Kshs. 100,000/=** or bond of **Kshs. 200,000/=** with a surety in an even sum.
 - ii. Accused 1, 3 and 4 – Each may be released on bond of **Kshs. 400,000/=** with a surety in a similar sum.
7. It is so ordered.

Dated, Signed and Delivered at Kitui this 23rd day of February, 2016.

L. N. MUTENDE

JUDGE