

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 29 OF 2012

(FORMERLY NYERI HC CRIMINAL CASE NO 8 OF 2010)

REPUBLIC.....PROSECUTOR

VERSUS

SIMON KARIUKI MWANGIACCUSED

R U L I N G

1. The Accused herein, **Simon Kariuki Mwangi**, is charged with *murder* contrary to **sections 203 and 204** of the *Penal Code*. It is alleged in the **information dated 15/03/2010** that on 05/06/2009 at Chui in Gitugi Location of Mathioya District in Central Province, jointly with others not before the court, he murdered **Joseph Ngeita**.

2. The Accused's plea was taken at the **High Court, Nyeri** on 07/04/2010. The case was subsequently transferred to this court before his trial started. The trial commenced on 29/05/2014 before my predecessor, Ngaah, J; six prosecution witnesses testified. Four additional prosecution witnesses have testified before me. The prosecution say they have three more witnesses to call. On 26/10/2015 the court warned that it would not grant any further adjournment upon the ground of non-attendance of prosecution witnesses. The case was scheduled for further hearing on 16/03/2016, but on that date the Judge was on leave. A date for further hearing will be given shortly.

3. In the meantime the Accused has applied by **notice of motion dated 25/01/2016** to be admitted to bail pending conclusion of his trial. The Republic has opposed the application upon the ground that the Accused had threatened some witnesses. But it turns out that the witnesses that he was alleged to have threatened have all testified. The remaining witnesses are two doctors and a police officer. It has not been alleged that the Accused has threatened these remaining prosecution witnesses.

4. I also note that trial of the Accused has taken an inordinately long time to conclude, and he has been in custody since the year 2009, a period of about seven (7) years now!

5. Bail pending trial is now a constitutional right for all offences, and will be denied only for compelling reason. Any condition for such bail, again by constitutional edict, must be reasonable. See **Article 49 (1) (h)** of the *Constitution of Kenya, 2010*.

6. In the circumstances of this case I find no compelling reason to deny the Accused bail. He shall be admitted to bail upon his own cognizance in the sum of KShs 300,000/00 and one surety in like sum. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 21ST DAY OF APRIL 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 22ND DAY OF APRIL 2016