



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO 2 OF 2014**

REPUBLIC.....PROSECUTOR

VERSUS

1. HENRY CHEGE KAMAU

2. EVANS MUKUNDI CHEGE.....ACCUSED

**RULING**

1. The Accused persons in this case, **Henry Chege Kamau** and **Evans Mukundi Chege**, are charged with **murder** contrary to **section 203** as read with **section 204** of the **Penal Code**. It is alleged in the information dated 06/01/2014 that on 01/01/2014 at about 9.00 p.m. at Kihuro Village in Kiairathe Sub-location within Kangema District of Murang'a County, they murdered one **Joseph Kamau Kimani**. On 29/01/2014 they pleaded not guilty to the charge. Their trial has been adjourned a number of times for recorded reasons. The trial is now scheduled to commence on 12/07/2016.

2. The Accused persons have in the meantime applied by **notice of motion dated 12/10/2015** to be admitted to bail pending their trial. The application has been opposed by the Republic by a replying affidavit sworn by one CI Simon Too, the investigating officer of the case, upon the ground that the Accused are likely to interfere with witnesses if released.

3. I have considered the submissions of the learned counsel for the Accused persons, and also those of learned prosecution counsel for the Republic.

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

5. The factual basis for the investigator's apprehension of the likelihood of interference with witnesses by the Accused persons is their close relationship with material witnesses. In this regard I have perused the witness statements and other documents supplied by the prosecution to the Accused persons and to the court. I note that the Deceased in this case was an uncle to one of the material witnesses. That material witness is a brother to the 1<sup>st</sup> Accused. Another material witness is a sister of the Deceased and the mother of the 1<sup>st</sup> Accused as well as some material witnesses. The 2<sup>nd</sup> Accused is also an uncle to the 1<sup>st</sup> Accused and also to some of the material witnesses.

6. It is also apparent that the Accused persons and the material witnesses live in the same compound.

7. In these circumstances it is not farfetched to apprehend that interference with material witnesses is a real possibility. I therefore consider that there is a compelling reason to deny the Accused persons bail. Their application is refused. They shall remain in custody during their trial. It is so ordered.

**DATED, SIGNED AT MURANG'A THIS 16<sup>TH</sup> DAY OF JUNE 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 17<sup>TH</sup> DAY OF JUNE 2016**