

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 5 OF 2016

PATRICK MWANGI WANJIKU

KIPSOI TITO CHERUIYOT.....APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicants were both charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. An application is before this court whereby the accused through their Learned Counsel Mr. Njuguna have applied to be released on bail pending the hearing of the murder case; they submit that the offence is bailable under the provisions of Article 49 of the Constitution 2010; and that they are entitled to bail on reasonable terms; so long as there are no compelling reasons to deny them this right.
3. The Prosecuting Counsel for the State Ms Gicheha opposed the application and relied on the Replying Affidavit made on the 4/05/2016 by the Investigating Officer PC Josphat Mbalu; he outlines several reasons for denying the accused admission to bail; one of the reasons being that a stolen mobile phone that is yet to be traced; that if released there is a likelihood that they may interfere with the prosecutions' investigations;
4. Having given due consideration to the application before this court and having noted that with the advent of the new Constitution 2010 times have changed and that although the accused have been charged with a serious offence of murder which carries a mandatory death sentence; the offence is indeed bailable;
5. The above notwithstanding the right to bail has limitations and the same may be denied if there are compelling reasons; the Investigating Officer has tendered such reasons in his replying affidavit and has deponed that he is apprehensive that due to the untraced cell phone there was a likelihood that if released the accused may interfere with investigations and witnesses.
6. This court is satisfied that there exist compelling reasons in support of the accused's continued detention and denial of bail; the reasons are as stated above;
7. But all is not lost after the star witnesses have testified the accused persons are at liberty to revisit their application for admission to bail.
8. For those reasons the application for bail is found not to be merited at this juncture and is disallowed;

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 27th day of October, 2016.

HON.A.MSHILA

JUDGE