



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL CASE NO. 26 OF 2016**

**REPUBLIC .....PROSECUTOR**

*versus*

**SAMUEL MURIITHI WAHOME ..... ACCUSED**

**RULING**

1. **SAMWEL MURIITHI WAHOME** is charged with two counts of the **offence of murder contrary to Section 203 as read with Section 204 of the Penal Code**. He pleaded not guilty and is now awaiting his trial. Pending his trial he has prayed that he be granted bail. To assist the court determine that application for bail a pre-bail probation report was availed to the courts.

2. In considering bail for an accused person the court should always be guided by the constitutional provision in **Article 50(2)**. That Article provides that every accused person has the right to be presumed innocent until the contrary is proved. It follows that an accused person has a right to his liberty. This is the principle expounded in **Article 49(1)(h)** of the constitution. That Article 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. In considering those provisions in the constitutional this court has to balance the constitutional rights of an accused with the interest of justice. In that consideration the rights of the victims or their families and that of the large community have to be borne in mind.

4. The pre bail probation report is negative towards the application for bail by the accused. The accused has no close relationship with his parents and siblings. He has no fixed abode. In 1985 he moved to Kisii until 2004 when he moved to an area called Munyu where he rented a house for four years. In 2008 he lived in Karatina and in 2010 he moved to his home area in Kamburaini location. Due to what accused’s parents said was his disrespect for them the whole family does not wish to be involved in the release on bail of the accused.

5. The accused is also not welcomed back by the community where the offences are alleged to have occurred. Indeed the probation report shows that the community is baying for accused blood. In that regard it would be dangerous for accused to be released into that community.

6. The mother of one of the victims of murder in this case stated that she feared for her life if accused is released because the accused had threatened her life.

7. The investigating officer swore an affidavit opposing the accused release on bail on the ground that after the murder of the two minors, the subject of this case, the accused went into hiding and was arrested one year later. The officer was of the view the accused would be a flight risk if released on bail.

8. With that information in mind and because the accused has no family members willing to stand surety for him and because his life would be in danger if released on bail, I find there is compelling reason to deny the accused bail. I would therefore request the learned counsels for the state and for the accused to agree on early hearing date of this case.

9. The accused bail applicant is dismissed.

**DATED AND DELIVERED THIS 23<sup>RD</sup> DAY OF NOVEMBER 2016.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant .....

Accused: Samuel Muriithi Wahome .....

For accused: .....

For the State: .....

**COURT**

Ruling delivered in open court.

**MARY KASANGO**

**JUDGE**