



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO 17 OF 2014**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**WILSON NDUNG'U KIMANI..... ACCUSED**

**RULING**

1. The Accused **Wilson Ndung'u Kimani** was arrested on 19<sup>th</sup> June 2014 and subsequently charged with **murder** contrary to **section 203 as read with section 204** of the Penal Code. His plea was taken on 04/07/2014. He pleaded not guilty. The case is scheduled to go to trial on 01/12/2015.

2. The Accused has in the meantime applied by **notice of motion dated 31/10/2014** seeking to be admitted to bail pending his trial. The Republic has opposed the application by a replying affidavit of one **Cpl James Martim** attached to Kirimiri Police Post. He has described himself as one of the investigating officers of this case. Two reasons are advanced in the replying affidavit for opposing bail –

(i) That the Accused's son, one **Samuel Mwaura Ndung'u**, is a suspect in the case but is still at large, and that the release of the Accused on bail will hinder his tracing and arrest.

(ii) That the Accused may commit other offences in relation to the witnesses who are members of the Deceased's family as there has been bad blood between the Deceased's and the Accused's families over a boundary dispute.

3. I have considered the submissions of the learned counsels appearing. Bail is a constitutional right in all criminal cases and will be denied only for compelling reasons. See **Article 49(1) (h)** of the **Constitution of Kenya, 2010**. The Constitution does not define the term **compelling reason**, and I have not found a definition of the term in any statute. However, the word **compelling** is defined in the **Oxford Advanced Learner's Dictionary, International Students' Edition**, as -

**“(a) extremely interesting and exciting, so that one has to pay attention: e.g. a compelling novel/account/story.**

**(b) that one must accept or agree with: e.g. a compelling reason/argument.”**

4. The Accused has now been in custody for about 11 months. Why have the police not apprehended the other suspect yet? There is no allegation that the Accused has interfered from the prison which has been his abode all this time with efforts to trace and arrest his son. And how is he going to hinder such efforts merely because he will no longer be in custody?

5. The other reason given to oppose bail is that the Accused may commit other offences. This is merely speculative as no particulars have been given.

6. I find no compelling reason to deny the Accused his constitutional right to bail pending his trial. He shall be admitted to bail upon his own cognizance in the sum of KShs 100,000/00 plus one surety in like sum. It is so ordered.

**DATED AT MURANG'A THIS 14<sup>th</sup> DAY OF MAY 2015**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 15<sup>TH</sup> DAY OF MAY 2015**