

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISCELLANEOUS CASE NO. 20 OF 2013

REPUBLIC..... APPELLANT

VERSUS

ALBERT WAFULA WASIKE.....1ST RESPONDENT

WILNEX WAKOLI WANYAMA 2ND RESPONDENT

RULING

1. The applicants Albert Wafula Wasike and Wilnex Wakoli Wanyama are faced with the offence of murder Contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the night of 13th/14th October, 2013 at an unknown turn at Kamba village in East Bukusu location within Bungoma county, jointly with others not before court they murdered one **Joseph Sifuna Munene**.

Both pleaded not guilty and sought to be admitted to bond pending hearing. A pre bail report was prepared for both to give insight into their background and if there were any compelling reasons do deny them bail.

2. The family of the 1st accused supported his release and indicated willingness to stand surety. The community around did not find him a flight risk, although the family of the deceased was apprehensive and fact that he may interfere with the witnesses. As for the 2nd accused the community looks at him as a habitual offender, the victims' family is of the view that he may harm them or interfere with the witnesses, after the alleged crime his two homes were torched by angry members of the community.

3. Bail pending hearing is a constitutional right unless there are Compelling reasons. The applicants first appeared in court on 1st November, 2013. This was more than 1 year 8 months ago. Even if the ground was hostile, things must have gone quiet by now. I note that the pre bail reports were prepared early, 2014. Secondly no details are given as to why the deceased family was apprehensive of the release of the 2nd accused and why the fear felt that he may interfere with witnesses.

4. As earlier stated bail/bond pending hearing is a right, with the above observations I have no compelling reasons to continue holding the applicants. I consequently admit the applicants to bond. They may each be released on a bond of Kshs. One million (1,000,000) with one surety of a like sum.

Dated at Bungoma this 27th day of October 2015

ALI-ARONI

JUDGE.