



**REPUBLIC OF KENYA**

**High Court at Nyeri**

**Criminal Case 4 of 2013**

**REPUBLIC.....PROSECUTOR**

**versus**

**JOHN KIRUGI MWANIKI.. .....ACCUSED**

**RULING**

1. By a notice of motion dated 13th March 2012 brought under the provisions of Article 49(1) (h) of the Constitution of Kenya the Applicant moved the court for grant of bail/bond pending the hearing and determination of the case.
2. The application was supported by the affidavit of the applicant's wife MARY WANJIRU KIRUGI in which she deponed that the applicant was arrested in January 2009 and charged with the offence of murder in High Court Criminal Case Number 14 of 2009 as a 2nd accused.
3. That the matter was fixed for hearing on 20th April 2009 but did not proceed since the Hon. Attorney General entered Nolle Prosequi in the case and that since the state entered Nolle Prosequi the applicant has never left their home.
4. That the applicant was rearrested on 13th February 2013 in connection with the same offence nearly four years after being released and that the same has been a law abiding person for the last 45 years.
5. In opposition to the said application the investigating officer IP DAVID MAKAU Deputy DCIO Nyeri swore an affidavit and stated that the deceased was shot by lone gunman at a close range on 25th January 2009 at 7.30 p.m.
6. That after investigation by the police it was established that the accused persons were responsible and that two of the accused persons Charles Njure Murage and Joseph Muthanga Mugwe are still at large and that immediately after the arrest of the two accused persons before the court the two disappeared.
7. That investigations are still ongoing for the purpose of arresting the two who are still at large and releasing the applicant will interfere with the said investigations.
8. That due to the serious nature of the offence there is a possibility of the accused person absconding.
9. Article 49(1)(h) of the Constitution give the rights to be released on bond pending trial with the only limitation imposed being compelling reasons not to be released

10. It is upon the state to show those compelling reasons to the satisfaction of the court to enable the court deny an accused person those constitutional rights.

11. In the case before me the only reason advanced is that investigation to arrest the two other persons are still on going and that the applicant if released is likely to interfere with this.

12. I have noted from the affidavit in support of the application that the applicant was arrested in January 2009 and therefore the investigations on this case must have been completed by then.

13. The applicant was arraigned in court on 26th February 2009 and released on 30th April 2009 upto 13th February 2013 when he was rearrested. I therefore do not consider him somebody who can abscond if released on bond.

14. If the investigating officer has been unable to arrest the two intended accused persons since 13th February 2013 when the applicant was arrested I do not see how the applicant will interfere with the investigations herein.

15. I therefore find no compelling reason to deny the applicant his constitutional rights under Article 49(1)(h) of the Constitution.

16. I have also noted that the applicant is aged 70 years and is therefore entitled to enjoy his rights constitutional under Article 57 of the Constitution and in particular Article 57 (c) and (d) which he might not be able to enjoy if in custody.

17. I therefore allow the application herein and order that the applicant be released on bond of Kshs. 500,000/- with surety of a similar amount or in the alternative cash bail of Kshs. 250,000/-.

18. As regard the 2nd applicant his application was supported by the affidavit of NYAWIRA NGURE who deponed that during the month of January 2009 he was arrested in connection with the murder of one WILLIAM MWANGI MACHARIA.

19. That after the arrest he recorded his statement with the police and was released without being locked in police cells upto 13th February 2013 when he was arrested and that he is among the selected village elders by the administration to help the administration of this area and he is well known.

20. As stated herein above there is no compelling reasons advanced by the state to enable me deny the same his constitutional right. He will therefore be released on bond of Ksh. 500,000/- with one surety of similar amount or in the alternative cash bail of Ksh. 300,000/-.

21. Having taken into account his age of 64 years and the nature of his business the applicant shall report for mention before the Deputy Registrar of this court once after every 30 days with the first such mention being 1st July 2013 and thereafter at a date to be set by the said Deputy Registrar.

Dated and delivered at Nyeri this 30th day of May 2013.

**J. WAKIAGA**

**JUDGE**

S.K. Njuguna for the applicants  
Mr. Njue for the State

Mr. Kimunya for Mr. Mugambi watching brief for the family of the victim.

**J. WAKIAGA**

**JUDGE**