

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 47 OF 2010

PETER MAINA GICHURI.....1ST ACCUSED/APPLICANT
SIMON GATAMA GICHURI.....2ND ACCUSED/APPLICANT
JAMES GICHUKI MWANGI.....3RD ACCUSED/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

PETER MAINA GICHURI, SIMON GATAMA GICHURI and JAMES GICHUKI MWANGI, being the 1st, 2nd and 3rd Accused persons respectively are before this court on the information of the Honourable Attorney General dated 3rd December 2010, to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. The particulars of the offence are that on 14th November 2010, the trio jointly murdered one Peter Waweru Kirera at Mucharage Village, within Nyeri county. The trio denied the charge and were then remanded in custody pending trial.

Pursuant to *Article 49(1) (h)* of the Constitution, the Accused persons took out the Motion dated 1st February 2011 in which they applied to be released on bond/bail pending trial. The accused each swore an affidavit in support of the Motion. The Honourable Attorney General filed the affidavit of Acting Inspector of Police Hannington Mwazonga, the investigating officer, sworn on 1st March 2011 to oppose the Motion. It is the submission of Mr. Muhoho, learned Advocate for the accused persons, that the accused persons are entitled to be released on bail under the Constitution unless there are compelling reasons to deny them such orders. The Applicants pledged to abide by the conditions attached to the order of bond. Mr. Makura, learned Senior State Counsel, urged this court to reject the accused person's request on the basis that the accused persons are likely to interfere with the prosecution witnesses and that they may be tempted to abscond from attending court. The Applicants denied the allegations. The Investigating officer has deponed in his affidavit that one of the eye witnesses, called Christopher Kibe Kirira is a brother to the deceased. It is said that he lives within the same village as the accused persons. The investigating officer further alleged that there are high chances that the accused persons may abscond from coming to court. Under *Article 49(1) (h)* of the Constitution, an accused person is entitled to be released on bail pending trial unless some compelling reasons are shown to deny them bail. In this case the state has given two reasons as compelling grounds to deny the applicants bail. First, it is said the accused persons come from the same village as the victim's family hence there is a likelihood of them interfering with witnesses. Secondly, it is said that the accused persons may abscond from attending court. In determining whether or not to grant bail, the court will take into account several factors. Those factors include *inter alia*: First, the court must be satisfied that if released, the accused will not interfere with witnesses. Secondly, that the accused will not abscond from attending court. Thirdly, that the accused will not commit other or related offences while on bond. Fourthly, that the accused will readily surrender to the court's custody when required. Fifthly, that the accused's safety is guaranteed or secure while out on bond. The main ground the state has opposed the application for bail is that the accuseds are likely to interfere with one of the eye witnesses. The investigating officer has specifically mentioned the name of that witness. It is said the accused persons come from the same village. The accused persons did not deny the fact that they come from the same village with Christopher Kibe Kirira an eye witness who is also a brother to the deceased. I am alive of the fact that in recent times there are instances where key

witnesses have been threatened and or scared by the mere presence of persons facing capital offences. It is worse in this case if those witnesses come from the same locality. The likelihood of the accused persons interfering with the witnesses is high. I am convinced that the investigating officer has given a good compelling reason why the applicants should be denied bail. For this reason alone, I refuse to admit the accused persons to bail by dismissing the motion dated 1st February 2011.

Dated and delivered at Nyeri this 27th day of May 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Makura for the State and Mr. Muhoho for the Accused persons.