



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL CASE NO.24 OF 2009**

REPUBLIC ..... PROSECUTOR

V E R S U S

JAMES S. AGUNGWI MUKAMANI ..... 1<sup>ST</sup> ACCUSED  
GEOFFREY MUTINYE MUKAMANI ..... 2<sup>ND</sup> ACCUSED  
EMMANUEL MUKAMANI ..... 3<sup>RD</sup> ACCUSED

**R U L I N G**

The three accused are charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The accused were arraigned before this court on 28<sup>th</sup> July 2009 where they pleaded not guilty to the charge. The trial commenced on 1<sup>st</sup> March 2011. Two witnesses have so far testified. Pursuant to **Article 49(1)(h)** of the **Constitution**, the accused have applied to be released on bond pending the hearing and determination of the case. Mr. Elung'ata for the accused submitted that the accused are willing to comply with any conditions that the court may impose for their release on bail pending the hearing and determination of their case. The State did not object to the accused being released on bond.

In accordance with the provision of **Article 49(1)(h)** of the **Constitution**, the accused have applied to be granted bail pending the hearing and determination of the case. They have pleaded with the court to be granted bail on reasonable terms. The State did not oppose to the accused being granted bail. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic [1986] KLR 600**. The said principles include the nature of the offence, the strength of the evidence, the character or behaviour of the accused and the seriousness of the punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exist which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused persons will interfere with witnesses if they are released on bond. This is taking into consideration the fact that if the accused are convicted, they will be sentenced to death.

Having carefully considered the accused persons' application, this court is of the view that the circumstances under which the offence is alleged to have been committed are such that the accused persons are entitled to be released on bail. This court is not oblivious of the fact that the accused persons security may be at risk if the community they come from do not accept them back if they are released on bail. However, since the law presumes the accused persons innocent until proven guilty, they shall be released on bail pending the hearing of the case. The State is not opposed to the accused persons being released on bail.

Each accused person shall be released on bond of KShs.2 million together with two sureties of the same amount. The sureties shall be approved by this court.

**DATED AT KAKAMEGA THIS 22<sup>ND</sup> DAY OF JUNE 2011**

**L. KIMARU**

**JUDGE**