

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 33 OF 2010

REPUBLIC.....RESPONDENT

VERSUS

DANIEL KARONJI WAHOME.....1ST ACCUSED
DAVID GITUKU KIRUHI.....2ND ACCUSED
DANIEL WACHIRA KIRUHI Alias KIUMBE.....3RD ACCUSED

RULING

Daniel Karonji Wahome, David Gituku Kiruhi and Daniel Wachira Kiruhi alias Kiumbe being the 1st, 2nd and 3rd accused persons respectively herein, are before this court to face a charge of murder contrary to the provisions of *Section 203* as read with *Section 204* of the Penal Code. The particulars of the offence are that on the 3rd day of September 2010 at Gituiga Village in Nyeri South District the trio are alleged to have jointly murdered Lucy Wangui Gitau. The 2nd and 3rd accused persons are now before this court seeking to be released on bail pending trial under Article 49 (1) (h) of the Constitution vide the Notice of Motion dated 10th February 2011. The Motion is the subject matter of this ruling. The State opposed the Motion by filing the replying affidavit of Sergeant Francis Wambua, the investigating officer of this case.

I have considered the grounds set out on the face of the Motion plus the facts deponed in the affidavit for and against the application. I have also considered the oral submissions of learned counsels from both sides. It is the submission of Miss Wambui, learned advocate for the Applicants, that there are no compelling reasons to deny the accused persons bail pending trial. Miss Ngalyuka, learned Senior State Counsel, opposed the application on the ground that there is evidence to show that the Applicants are likely to interfere with witnesses if they are released on bail. It is important at this stage to state that *Article 49 (1) (h)* of the Constitution enjoins the court to admit an accused person to bail pending trial unless compelling reasons are shown to deny such a person bail. In this case the State has stated that if the accused persons are released on bail, they will interfere with the witnesses. Attached to the replying affidavit of Sergeant Francis Wambua, is a copy of a judgment of the Nyeri, Chief Magistrate's court delivered on 2nd June 2005 vide **Nyeri C.M.C.CR. Case No. 5461 of 2003**. In the aforesaid judgment, it is clear that the Applicants herein had been tried on a charge of robbery with violence contrary to *Section 296 (2)* of the Penal Code. The Complainant in that case was Lucy Wangui Gitau, the deceased in this case. The Applicants were convicted and sentenced to suffer death. It would appear the Applicants appealed to this court. The appeal was allowed and an order for retrial was made. The case against the Applicants was reheard afresh before Mrs. Muketi, learned Chief Magistrate vide **Nyeri CM.C.CR. C. NO. 1155 of 2005**. The applicants were acquitted under Section 215 of the Criminal Procedure Code on 5th August 2010. The investigating officer averred that the Complainant in those cases was attacked and killed within a month after the accused persons (Applicants) were acquitted. The investigating officer further alluded in his averments that one of the key witnesses namely David Maina Mwangi, an employee of the deceased, has received threats in respect of this case. It is also stated that some of the witnesses who are family members of the deceased have relocated from Othaya. It is further alleged that the Applicants are likely to commit other offences if they are released on bail. The Applicants denied the allegations made by the investigating officer. They promised to abide by any conditions attached to the release order. What remains uncontroverted are the facts outlined by the investigating officer in the replying affidavit. There is no dispute that some of the witnesses in this case have received threats. Some

have even relocated to other places from Othaya. It is also not in dispute that the deceased was the Complainant in the case where the Applicants were acquitted on 5th August 2010. The deceased was allegedly attacked and killed on 16th September 2010 just 40 days after the Applicants were acquitted. In my view, the chronology of events given in the replying affidavit of Sergeant Francis Wambua raises grounds which are compelling enough to enable this court deny the Applicants bail. In other words, there are strong evidence that it is possible that the Applicants may interfere with witnesses. The prosecution have successfully shown the compelling reason why the Applicants should be denied bail.

In the end I dismiss the Motion dated 10th February 2011 with no order as to costs.

Dated and delivered at Nyeri this 17th day of June 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Kimani watching brief for the family, Miss Wambui for the 2nd and 3rd Accused and Mr. Makura for the State.