



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL CASE NO. 44 OF 2010**

**DUNCAN MURIUKI MUKETA.....1<sup>ST</sup>**

**APPLICANT**

**PATRICK WAHOME WACHIRA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Pursuant to the provisions of *Article 49 (1) (h)* of the Constitution, **Duncan Muriuki Muketa** and **Patrick Wahome Wachira** being the 1<sup>st</sup> and 2<sup>nd</sup> Applicants herein, took out the Motion dated 22<sup>nd</sup> March 2011 in which they applied to be released on bail/bond pending trial. They each swore an affidavit filed in support of the application. When the Motion came up for interpartes hearing, on 30<sup>th</sup> May 2011, Mr. Makura, learned Senior State Counsel, applied for an adjournment to enable him secure the replying affidavit of the investigating officer to oppose application. The Motion was then adjourned to 30<sup>th</sup> June 2011 for hearing. On the aforesaid date, Mr. Makura again, failed to file a replying affidavit hence the Motion proceeded for hearing as unopposed.

The Applicants are before this Court on the information of the Honorable Attorney general dated 23<sup>rd</sup> November 2010 duly charged with the offence of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. The particulars of the offence are that on the 5<sup>th</sup> day of November 2010, at Mt. Kenya Mwea B village in Nyeri North District, within Central Province, the duo are alleged to have jointly murdered Gerishom Gatere Karuma. They are now seeking to be released on bond/bail pending trial. Under *Article 49(1) (h)* of the Constitution, any person arrested for any offence has a right to be released on bond or bail, on reasonable terms pending trial unless there are compelling reasons not to be released. The burden of giving the compelling reasons is placed on the prosecution. In this case the prosecution successfully applied for an adjournment to enable them file a replying affidavit to bring forth the compelling reasons. Those reasons have not been given. I have no reason why I should deny the accused persons bail. I hereby admit each one of them to bail. I hereby order that Duncan Muriuki Muketa and Patrick Wahome Wachira be released upon each one of them signing a bond of Ksh.500,000/= with two sureties of like sum.

***Dated and delivered at Nyeri this 15<sup>th</sup> day of July 2011.***

**J. K. SERGON**

**JUDGE**

In open court in the presence of Miss Muchoki for the Applicants and Miss Ngalyuka for the State.