

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 30 OF 2010

SIMON KAGIRI

MATHENGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Simon Kagiri Mathenge, the applicant herein, is before this court on the information of the Honourable Attorney General dated 13th September 2010 to face a charge of murder contrary to *Section 203* as read with *Section 24* of the Penal Code. The particulars of the offence are that on 31st August 2010 at Kiriti village, in Tetu location, Nyeri District within Central Province, it is alleged he murdered Robinson Nderitu Wanjau.

Pursuant to the provisions of *Article 49 (1) h* of the Constitution, the Applicant has taken out the Motion dated 22nd March 2011 in which he applied to be released on bond/bail pending trial. He has sworn an affidavit he filed in support of the application. The Republic opposed the Motion by relying on the replying affidavit of William Musau sworn on 12th May 2011.

I have considered the grounds set out on the face of the Motion plus the facts deponed in the affidavits filed for and against the Motion. The Applicant has specifically stated that he has approached this court to release him on bond/bail pending trial as a matter of right under the Constitution. It goes without saying that the applicant will always be presumed innocent until proven guilty. It is also clear from the provisions of *Article 49 (1) h* of the Constitution that the Applicant is entitled to be released on bond/bail unless it is shown that there are compelling reasons shown to be denied such a right. The burden of proving that there are compelling reasons is placed on the prosecution. In the Motion before this Court, the investigating officer has deponed in the replying affidavit that the Applicant is likely to interfere with witnesses if he is released on bond/bail in view of the fact that he comes from the same village with two of the witnesses. It is also alleged that the Applicant may abscond from attending court. The Applicant through his advocate, admitted that he comes from the same village with some of the witnesses. Can the reasons advanced by the Investigating Officer be deemed as compelling? In my view, the same cannot be said to be compelling. The Investigating officer has not given in detail how the Applicant will interfere with the named witnesses. Those witnesses have not deponed any affidavit to show that the Applicant will interfere with their testimonies. It is also not clear from the replying affidavit that the Applicant is a person with a previous record of abscondment. It is not alleged that he has no fixed abode.

In the end I am satisfied that the Applicant should enjoy his Constitutional right of bond. I grant him the order. Consequently, Simon Kagiri Mathenge should be released upon signing a bond of Ksh.500,000/= with two sureties of like sum.

Dated and delivered at Nyeri this 15th day of July 2011.

J. K. SERGON

JUDGE

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