



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**CRIMINAL CASE NO. 12 OF 2011**

REPUBLIC.....PROSECUTOR

VERSUS

ALEX ODHIAMBO OMONDI.....1<sup>ST</sup> ACCUSED  
JOSEPH PATRICK WANYOIKE KINYANJUI.....2<sup>ND</sup> ACCUSED/APPLICANT

**RULING**

**JOSEPH PATRICK WANYOIKE KINYANJUI**, is before this court together with **ALEX ODHIAMBO OMONDI**, to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. Pursuant to the provisions of *Article 49 (1) (h)* of the Constitution, the Applicant has taken out the motion dated 10<sup>th</sup> May 2011 in which he seeks to be released on bail/bond pending trial. He swore an affidavit in support of the Motion. The republic opposed the Motion by filing the replying affidavit of Stephen Muroki.

In the Motion, the Applicant has beseeched this Court to admit him to bail/bond pending trial since it is his constitutional right. The Republic on the other hand, has urged this Court to deny him bail by giving what the Honourable Attorney General thought were compelling reasons. There is no doubt that the Applicant is entitled to be released on bail/bond pending trial unless compelling reasons are given to deny him such a constitutional right. A critical look at the replying affidavit of Corporal Stephen Muroki, will reveal that the State has given two reasons to this Court to convince me deny the Applicant bail/bond. It is averred that if the Applicant is released on bail, he is likely to interfere with witnesses. It is said that the Applicant is a brother of an Administration Police Officer who is a colleague of the co-accused. I have anxiously considered this ground and in my view I am not convinced there is any iota of evidence to show how the Applicant will interfere with witnesses. The fact that he is a brother to a Police Officer who is a colleague to the co-accused does not in itself mean the Applicant will have a leeway of interfering with witnesses. It was incumbent upon the Republic to explain how that relationship will in itself cause interference with witnesses.

The other ground which emerged from the replying affidavit is that Applicant is likely to abscond from attending court due to the severe penalty he is likely to face. In my view that is not enough compelling reason. The Republic was required to explain why it thinks the Applicant will abscond. The severity of sentence alone is not enough. Perhaps the Applicant's past conduct should have been brought into question to show that he is a person who has on previous occasions absconded.

In the final analysis I am satisfied that the Republic has not given cogent compelling reasons to enable me deny the Applicant bail. I hereby admit the Applicant to bail/bond pending trial. He should be released upon signing a bond of Ksh.500,000/= with two sureties of like sum

***Dated and delivered at Nyeri this 8<sup>th</sup> day of July 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Miss Ngalyuka for the State and the accused persons in person. No

appearance for Mr. Waruinge.