

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL CASE NO. 21 OF 2011

REPUBLICPROSECUTOR/RESPONDENT

VERSUS

PETER GUTUMA NJOGU1ST ACCUSED/APPLICANT
CHARLES MWANGI KIMANI 2ND ACCUSED/APPLICANT
JOHN WACHIRA MURIITHI 3RD ACCUSED/APPLICANT
FRANCIS WACHIRA MURIITHI 4TH ACCUSED/APPLICANT

R U L I N G

This is an application for bond dated 27/10/2011. It's supported by the affidavit of Nduku Njuki Counsel for the accused persons. In his affidavit he says he has gone through all the statements of the witnesses and none has adversely mentioned any of the accused persons. The application is made pursuant to Section 357(1) Criminal Procedure Code and Article 49(1) (h) of the Constitution.

The State has opposed the release of the accused persons on bond, saying they face a serious offence. She further says they are likely to interfere with witnesses, who are related to them.

I am alive to the provisions of Article 49(1) (h) of the Constitution concerning bond to arrested persons. The provisions say, the arrested person to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

It's the State which could give any compelling reasons for not releasing an arrested person on bond.

Counsel says the evidence in the witness statements does not adversely touch any of the accused. Then why are they before court? It's unfortunate that it's only the Prosecution and Defence who are in possession of the evidence involved herein.

One thing comes out clearly that the accused and the deceased's family are closely related which means the witnesses must also be related to the accused persons and the deceased in one way or another. The chances of interference with witnesses cannot just be wished away. And for this reason I decline to grant bond for now. The court will reconsider the bond application after listening to the evidence of at least five(5) witnesses.

DATED, SIGNED AND DELIVERED AT EMBU THIS 22ND DAY OF NOVEMBER 2011.

**H.I. ONG'UDI
J U D G E**