



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL MURDER NO. 16 OF 2016**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**DOUGLAS WAWERU MWANGI..... 1<sup>ST</sup> ACCUSED**

**SAMSON GUCHU WAITHAKA.....2<sup>ND</sup> ACCUSED**

**RULING**

1. The 2<sup>nd</sup> accused **Samson Guchu Waithaka** brought an application by way of Notice of Motion under **Article 49 (1) (h) and Article 2** of the **Constitution** seeking an order that he be released on bond with surety pending hearing and determination of this case.
2. He based the application on the grounds that he has a constitutional right to bail pending trial, is presumed innocent until proven guilty, has pleaded not guilty to the charge and will abide by any conditions that the court may set.
3. According to the 2<sup>nd</sup> accused, there are no compelling reasons to deny him bail. He supported the application with an affidavit sworn on 24<sup>th</sup> November, 2016.
4. The state filed a replying affidavit sworn by Inspector Obadiah Musira contending that the accused person had threatened witnesses of dire consequences if they gave any information to the Police.
5. According to Inspector Musira the accused were likely to interfere with efforts to trace the relatives of the deceased.
6. At the time of hearing, the state informed the court that they did not oppose the application but agreed with defence that the 2<sup>nd</sup> accused should not interfere with witnesses.
7. I have considered the application. I find that bail pending trial is a constitutional right under **Article 49 (1) (h)** of the Constitution. The 2<sup>nd</sup> accused should enjoy the right unless there are compelling reasons. Since the state does not oppose the application, the 2<sup>nd</sup> accused is entitled to bail. I have considered the pre-bail report filed by the Probation Officer. It recommends that the 2<sup>nd</sup> accused is suitable for release on bail pending trial.
8. I order that the 2<sup>nd</sup> accused shall be released on bail pending trial. The 2<sup>nd</sup> accused is ordered not to interfere with any witness or any person intended to be a witness in the trial. In the event that he does not comply with this condition, Police will be at liberty to arrest him and present him in court for cancellation

of his bond.

9. The 2<sup>nd</sup> accused be released on a bond of Ksh.1,000,000/= plus one like surety to be approved by the Deputy Registrar.

*Dated and delivered at Kerugoya this 21<sup>st</sup> day of February 2017.*

**L. W. GITARI**

**JUDGE**

**Read out in open court, in the presence of Mr. Sitati for State, court assistant Naomi Murage and 1<sup>st</sup> and 2<sup>nd</sup> accused.**

**L. W. GITARI**

**JUDGE**

**21.2.2017**