

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 10 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JAMES MBURU WAMWEA

JOHN MBURU WAMWEAACCUSED

R U L I N G

1. The Accused persons herein, **James Wamwea Mburu** and **John Mburu Wamwea**, are father and son. They are jointly charged with *murder* contrary to **section 203 as read with section 204** of the **Penal Code**. It is alleged in the information dated 03/02/2014 that on 29/01/2014 at Mdaka-ini, Gatanga District within Murang'a County, they jointly murdered **Haron Wamwea Ndirangu**. Their trial commenced on 19/02/2015, and four (4) prosecution witnesses have so far testified.

2. On 30/05/2014 the court (Ngaah, J) admitted the Accused persons to conditional bail pending their trial. Those conditions were –

- (i) That each executes a bond of KShs 1,500,000/00 with 2 sureties each in like sum.
- (ii) That the Accused persons do report to court once each month pending their trial.
- (iii) That they should not leave the jurisdiction of the Court without the court's prior permission.

3. The Accused persons have now applied by chamber summons dated 02/06/2015 for a variation of those terms. It appears from their supporting affidavit that they have been unable to meet the condition that each of them provides 2 sureties in the sum of KShs 1.5 million.

4. Bail pending trial for any offence is now a constitutional right that will be denied only for compelling reason. Also by constitutional edict, any conditions imposed for bail must be reasonable. See **Article 49(1) (h)** of the **Constitution of Kenya, 2010**.

5. As already observed, the Accused persons are father and son. They would have to marshal four (4) different persons to stand surety for them in the sum of KShs 1.5 million each. As is the practice in our court, sureties usually have to deposit valuable documents in court (title deeds, log books for motor vehicles, etc.) to qualify to stand sureties. It is not surprising that the Accused persons have been unable to secure two sureties each who are worth, individually, at least KShs 1.5 million.

6. Obviously any conditions imposed for bail must not amount to a denial of bail. I consider that this is a proper case for review of the bail terms imposed by the court on 30/05/2014. Each Accused may now be released upon his own cognizance in the sum of KShs 300,000/00 plus one surety in like sum. To that limited extent only is the application allowed. The other two conditions imposed by the court on 30/05/2014 shall remain in place. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 11TH DAY OF FEBRUARY 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 12TH DAY OF FEBRUARY 2016