



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO. 31 OF 2016**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**PATRICK ITHALII BARAGU ..... 1<sup>ST</sup> ACCUSED**

**JAMES MURIITHI NTONJA ..... 2<sup>ND</sup> ACCUSED**

**RULING**

**Patrick Ithalii Baragu** and **James Muriithi Ntonja** are jointly charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. They have filed applications dated 18/8/2016 and 8/9/2016 respectively, seeking to be released on bond pending trial.

Accused 1 deponed that he has a fixed place of abode in Antuambui Sub-Location where he does farming; that he will be ready to abide by any terms that the court may impose; that he has suffered injuries i.e. broken leg and needs help of his family and that his right to bail is being infringed by the continued incarceration.

Accused 2 deponed that the offence was committed way back in 2015 and he was not arrested till August 2016 and yet he was just at home and hence he is not a flight risk; that he is willing to abide by any bond terms that the court will impose.

The applications were opposed and the Investigations Officer, **PC Johnstone Gitau** swore a replying affidavit in which he recounted inter alia that the murder took place on 26/2/2016 but the accused went into hiding till they were arrested on 30/5/2016 and 19/8/2016 respectively, several months later and that they are therefore a flight risk. He also deponed that the key witnesses including Mary Ciarundu who also swore an affidavit are apprehensive that if the accused are released, their lives may be in danger.

The court called for pre-bail reports which I have considered along with the affidavits sworn by the State and the accused.

The accused have a Constitutional right to bond because they are presumed innocent till proved guilty. The accused will only be denied bond if there are compelling reasons to do so. Whereas the pre-bail reports are favourable to the accused being released on bond, yet the Investigations Officer has deponed that the accused are flight risks in that they went underground after the offence was committed. There has been no response to that allegation. The key consideration in an application for bond is that the accused will turn up for trial. If indeed the accused went underground to avoid arrest, there cannot be guarantee

that they will honour the bond terms.

For that reason alone, I decline to grant the accused bond. They will remain in remand pending hearing of the case.

**DATED, SIGNED AND DELIVERED THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2016.**

**R.P.V. WENDOH**

**JUDGE**

**10/11/2016**

**PRESENT**

Mr. Mulochi for State

Ibrahim/Peninah, Court Assistants

Both Present, Accused