



**REPUBLIC OF KENYA  
IN HIGH COURT OF KENYA**

**AT MERU**

**HCR 18 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VRS**

**1. STEPHEN MURURU**

**2. NAFTALI MURIUNGI.....ACCUSED**

**RULING**

The two applicants, Stephen Mururu and Naftali Muriungi are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. They have filed two applications dated 9/3/2015 seeking to be released on bond pending the hearing of their case. The applications are based on grounds found on the face of the applications and affidavits which are basically the same. The grounds are inter alia that the accused have a fundamental right to bond pending trial because they are presumed innocent till proven otherwise; that they are willing to attend court as will be required of them, and comply with all the conditions that the court may impose; that they are Kenyan citizens and residents of Kenya and not a flight risk.

The State opposed the applications through a replying affidavit sworn by IP Patrick Mwatha who is the Investigating Officer in the case. He deposed that the witnesses hail from the same area as the accused persons and they are likely to interfere with them; that the right to bail is not absolute and since the likely sentence upon conviction is severe, there is likelihood of the accused absconding.

It is true that the right to bail granted by Article 49 is not absolute. The Article states that bail will be denied if there are compelling reasons to deny the bond. In considering an application for bond, the court will normally consider the following:

1. Whether the accused will attend court for his trial;
2. Whether the accused will interfere with prosecution witnesses;
3. The seriousness of the offence and severity of the likely sentence;
4. The past antecedents and character of the accused.

The court called for a social enquiry report which was prepared by the Probation Officer. As respects the first accused, it was established that he does not really have a fixed abode having left home in 1977 and has been living in different places in Meru town and that the victim of murder having hailed from where

he lived, he is unlikely to go back there. The Local administration also informed the Probation Officer that there was a report of accused 1 having threatened witnesses before his arrest. As respects Accused 2, he was reported to have contributed to issuing threats to the witnesses and that his home is adjacent to the deceased's home. The administration were of the view that if released on bond, he may pose a risk to the witnesses.

Having considered the affidavits and the pre-bail reports, I am satisfied that if released on bond, the accused may intimidate the witnesses. Accused 1 does not have a fixed abode and is a flight risk. For the above reasons, I find that the applications are not merited and are declined.

**DATED, SIGNED AND DELIVERED THIS 10 DAY OF JUNE, 2015.**

**R. P. V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Musyoka for State

Mr. Muriithi holding brief for Mr. Mutuma for Accused

Faith, Court Assistant

Both Accused, present