



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO.85 OF 2013**

NAHASHON KAREITHI..... 1<sup>ST</sup> APPLICANT

ERASTUS MWENDA.....2<sup>ND</sup> APPLICANT

VS

REPUBLIC.....RESPONDENT

**RULING**

By a Notice of Motion Application dated 18<sup>TH</sup> March 2015 and brought pursuant to the provisions of Article 49 (1) (h) of the Constitution 2010, and Section 357 of the Criminal Procedure Code CAP 75 of the Laws of Kenya, the accused persons have sought to be admitted to bail pending trial.

The gist of the application is inter alia that the accused persons have an unqualified constitutional right to be released on bond or bail on reasonable conditions that the accused persons are presumed innocent until proven guilty; that they are not aware of any compelling reasons that would warrant them to be denied bond.

The application was opposed. Mr. Mulochi, Learned Counsel for the State sought to rely on a replying affidavit sworn by Chief Inspector Peter Mwaura, the investigating officer in this case. He deposed *inter alia*, that the accused persons without provocation murdered the deceased in cold blood and buried the body in a shallow grave in a *shamba*; that the accused persons are a flight risk since they fled after committing the offence and were arrested on 29<sup>th</sup> September at Kautini village by the area chief and one PC Thomas Mosoti; that key prosecution witnesses are well known to the accused persons and if they are released on bail/bond, there is a high probability that they will interfere with witnesses and that further their detention is necessary in order to maintain confidence in the administration of justice having regard to all the circumstances. He further contended that the right to bail/bond as enshrined in the Constitution is not absolute and is at the discretion of the court.

Before the court considered this application, it called for pre-bail reports in respect of the accused persons. According to the pre-bail reports filed in court on 8<sup>th</sup> June 2015, the immediate family members of the deceased were yet to come to terms with the death of an innocent child and were not ready to accept that it was an accident as alleged by the family of the accused's employer. The local administration and neighbours were not opposed to the accused persons being released on bond.

Even though an arrested person has Constitutional right to bail/bond pursuant to Article 49 (1) (h) of the Constitution, the said right is not absolute since the same provision states that an arrested person shall not

be released if there are compelling reasons. The Constitution does not define what compelling reasons are, and each case would depend on its own special circumstances. Generally, the court will consider the following in such an application:

1. Whether the accused will turn up for his trial;
2. Whether the accused will interfere with witnesses;
3. The character and antecedents of accused;
4. Whether accused's life will be in danger.

Having considered both the affidavits and the pre-bail report, the characters of both accused are not in question. The said enquiry report indicates that the accused were law abiding citizens before this incident. Though the prosecution contends that they are flight risks, they were arrested only 3 days after the incident. Besides that, the local administration did not indicate that they ever fled.

In the end, I find that there are no compelling reasons to deny the accused persons bond. Each may be released on bond of KShs.400.000/= with one surety of like sum. They are required to attend court as will be required of them; should not interfere with witnesses and should be of good conduct during the pendency of their case. In default, bond will be cancelled.

Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 3<sup>RD</sup> DAY OF JULY, 2015**

**R. P. V. WENDO**

**JUDGE**

**PRESENT**

Mr. Mulochi for State

Mr. Wamache Holding Brief for Mr. Kiogora for Accused

Faith/Janet, Court Assistant

Accused, Present