

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA T MURANG'A

CRIMINAL CASE NO 5 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

1. JAMES SIOYI KIPKANIA

2. GEOFFREY MAKANA NYAKUNDI.....ACCUSED

RULING

1. The Accused persons herein, **James Sioyi Kipkania** and **Geoffrey Makana Nyakundi**, 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 15/01/2014 that in the night of 19th and 20th July 2013 at Kagaa area within Kiambu County, and jointly with others not before the court, they murdered one **Bernard Irungu Kirubi**. They pleaded not guilty on 29th January 2014. Their trial commenced on 26/06/2014 before Ngaah, J (since transferred to another station) when one witness testified. The case is scheduled for further hearing on 26/10/2015.

2. Both Accused have now applied to be released on bail pending conclusion of their trials. Those applications (notices of motion dated 25/03/2014 and 23/04/2015) are the subject of this ruling.

3. Bail is now a constitutional right for any offence, and will be denied only for compelling reason. Conditions for such bail must, again by constitutional edict, be reasonable. See **Article 49(1) (h)** of the **Constitution of Kenya, 2014**.

4. The Republic purported to oppose bail, apparently in respect to the 1st Accused only, by a replying affidavit filed on 20/04/2015. But it turned out at the hearing of the applications that the affidavit by one **No 71662 PC Mbelenge**, was not duly commissioned by a **Commissioner of Oaths** or **Magistrate**. In effect therefore, there is no replying affidavit properly before the court. The applications thus stand unopposed.

5. I find no compelling reason to deny the Accused persons bail. They shall be admitted to bail upon their own personal cognizance in the sum of KShs 300,000/00 and one separate surety each in like sum. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 16TH DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 17TH DAY OF JULY 2015