



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 28 OF 2015

JOSHUA MUCHUI KAIRERA ALIAS

EDWIN KATHURIMA PUTHIA ... 1ST ACCUSED/APPLICANT

JAMES KIMATHI ALIAS

DANCUN KIMATHI MURIIRA ... 2ND ACCUSED/APPLICANT

V E R S U S

REPUBLIC..... PROSECUTOR

RULING

JOSHUA MUCHUI KAIRERA alias **EDWIN KATHURIMA MPUTHIA** and **JAMES KIMATHI** alias **DANCAN KIMATHI MUMIRA** (the applicants) face a charge of murder contrary to Section 203 as read with Section 204 of the PC. The applicants have brought an application seeking to be released on bond pending the hearing of the case. The applicants have sworn affidavits that they have an unqualified Constitutional right to bond; that they are presumed innocent until proved guilty; that they are ready to abide by any conditions that the court will impose.

The application was opposed by IP WAFULA WANDILI, the Investigation Officer, who deposed that the right to bail is not absolute; that the accused reside in the same locality as the witness and are likely to interfere with them; that the murder occurred recently and their release may arouse vengeful feelings in the community which might lead to commission of other offences; that 1st accused is serving sentence at Kangeta GK Prison and accused 2 is remanded at Meru GK Prison and not suitable for release on bond because they are a flight risk.

This court asked for pre-bail reports which have been filed in respect of each accused.

Bail is a Constitutional right to an accused under Article 49 (1) of the Constitution but the said right is not absolute because if there are compelling reasons to deny bond, the court will not grant it. In this case, both accused are said to be habitual offenders with accused 1 serving sentence for a related offence; the deceased was both accused's uncle and most of the relatives are not willing to have them released on bond. It was also disclosed that the applicants escaped lynching as one of the suspects was lynched and they are likely to be lynched if released and so it is for their own good that they remain in custody. The witnesses are members of the same family and if released they, may feel intimidated by the presence of the applicants. For all the above stated reasons, I am satisfied that there are compelling reasons that

warrant me to deny applicants bond. The application for bond is declined. The accused will remain in remand pending hearing of their cases.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF OCTOBER, 2015.

R.P.V. WENDOH

JUDGE

9/10/2015

PRESENT

Mr. Mulochi for State

Mr. Igweta Holding Brief for Mr. Kogora for Accused

Peninah, Court Assistant

Both present - Accused