



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL CASE NO. 5 OF 2013**

P N M.....1<sup>ST</sup> ACCUSED /APPLICANT

M N M.....2<sup>ND</sup> ACCUSED/APPLICANT

**VERSUS**

REPUBLIC.....RESPONDENT

**RULING**

The applicants are husband and wife and they have both been charged with murder contrary to **section 203** as read with **section 204** of the Penal Code. It is stated in the particulars of the offence that on diverse dates between the 8<sup>th</sup> day of February, 2013 and 20<sup>th</sup> day of February, within Nyeri County, the applicants murdered D M N.

The record shows that they were charged on 12<sup>th</sup> March, 2013 when they both entered a plea of not guilty. On 4<sup>th</sup> February, 2014, the court directed the state to file an affidavit if it was opposed to the applicants being released on bail. Again on 24<sup>th</sup> June, 2014, the court directed the probation officer in charge of Kieni West to prepare and file a pre-bail report to enable the court make a decision on whether the applicants can be released on bail.

The application for bail was finally argued on 6<sup>th</sup> May, 2015 and as usual in such applications, counsel for the accused invoked **article 49(i) (h)** of the **Constitution** which guarantees an accused person the right to bail pending trial unless there are compelling reasons against such admission.

In the affidavit filed in opposition to the application for bail, the state opposed the application mainly on the ground that the applicants are a flight risk and that they are likely to abscond because they do not have a fixed abode.

The pre-bail report filed by the probation officer of Nyeri Central on 16<sup>th</sup> September, 2014 showed, however, that the 1<sup>st</sup> accused person is the second born in a family of four and that this family owns a two-acre parcel of land in Kieni west District where he lives with the rest of the members of his family. One acre of that parcel is divided amongst the first applicant and his three brothers.

The 1<sup>st</sup> applicant as noted is the husband to the 2<sup>nd</sup> applicant and until the time they were arrested and charged they lived on their parcel of land at Kieni with their only child DMN who they are alleged to have murdered.

The pre-bail report in respect of the 2<sup>nd</sup> applicant showed that she was married to the 1<sup>st</sup> applicant and

they lived together as husband and wife at the 1<sup>st</sup> applicant's home though their marriage was troubled.

In view of the findings by the probation officer on the applicant's social background, it is apparent that the state's argument that the applicants do not have a fixed abode cannot stand and certainly it cannot be what would be considered a compelling reason to deny the applicants bail.

The state also argued that the applicants were arrested away from their home and therefore they could be a flight risk. It may be true that the applicants were arrested at other places away from their home but that in itself does not suggest that they are a flight risk. I note that they were arrested on or about the same time the offence is alleged to have been committed; there is no evidence that before then, any attempts had been made to arrest the applicants.

I am inclined to grant the applicants' application for bail pending trial; they will be released on the following conditions:-

1. Each of the applicants shall execute a bond of **Kshs. 1 Million** with two sureties of the same amount.
2. The applicants shall not leave the jurisdiction of this court without the court's prior permission.
3. The applicants shall report to the Deputy Registrar, High Court Nyeri, once every month pending the hearing and determination of their trial.

It is so ordered.

**Dated, signed and delivered in open court this 2<sup>nd</sup> day of October, 2015**

Ngaah Jairus

**JUDGE**