



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 43 OF 2013

WILFRED KARANJA MUNGAI.....1ST APPLICANT

SAMUEL MUCHIRI SIRONKA2ND APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The application dated **19th February, 2014** is brought pursuant to the provisions of **Article 49 (1) (h)** of the Constitution of Kenya, 2010. It is for bail pending trial.
2. The application is premised on grounds that the Applicant, **Wilfred Karanja Mungai**, is in employment and is a law abiding citizen who has a place of abode hence not a flight risk. He has good antecedents and is of high moral standing and there are no compelling reasons to necessitate denying him bail.
3. In a supporting affidavit deponed by the accused (*applicant*) he avers that he is a family man with a wife and children and lives far away from the victims of the alleged crime; bail, if granted will enable him prepare for his defence and he is willing to attend court whenever required.
4. The application is opposed by the State. In an affidavit in reply to the application, **No. 46195 P.C. Stanley Gichohi** the investigating officer stated that the accused and the witnesses reside in the same Centre, Birika, hence there is a likelihood of the accused interfering with them.
5. Further he stated that in case of a conviction the accused will face the death penalty which is an incentive to abscond.
6. Bail is a constitutional right save that if there are compelling reasons why it should not be granted then it should be denied. (**See Article 49(1) (h) of the Constitution of Kenya , 2010**)
7. The primary question that should be posed in the circumstances is whether the accused shall turn up for trial. There are however relevant factors that should also be considered namely;-
 - i. the nature of the charge;
 - ii. the accused's character and previous convictions, if any;
 - iii. whether the accused has a settled address;
 - iv. The likelihood of the accused interfering with prosecution witnesses.
8. I am alive to the fact that in reaching the decision to either grant or deny the accused bail, I must consider facts as presented and not be moved by mere speculation. This is because the accused person's liberty should not be interfered with for no good cause.
9. The accused person is charged with a serious offence that attracts a death penalty in case of conviction. The affidavit sworn did not allude to his character. He has a settled address because it is stated that he lives in the same center with witnesses who are to testify. Having been furnished

with statements recorded by witnesses, their allegations are within his knowledge. It may be imperative for the said witnesses to testify prior to the accused being released on bail. This case is for hearing today. This court will take evidence of witnesses who come from the same center with the accused prior to reconsidering the application. This order shall apply to his co-accused.
10. In the meantime bail is denied.

DATED, SIGNED and DELIVERED at MACHAKOS this 4TH day of JUNE, 2014.

L.N. MUTENDE

JUDGE