

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NYERI

Criminal Case 26 of 2011

REPUBLIC.....PROSECUTOR
-versus-

1. CHARLES MWANGI MWEREGI.....1ST ACCUSED/APPLICANT

2. LINUS MWIRIGI MWANGI.....2ND ACCUSED/APPLICANT

R U L I N G

This ruling is the outcome of the application dated 8th November 2011, in which Charles Mwangi Mwerigi and Linus Mwirigi Mwangi, prayed to be released on bond pending trial pursuant to the provisions of **Article 49(1) h** of the **Constitution**. The application is supported by the affidavit of H. K. Ndirangu and a further affidavit of Charles Mwangi Mwerigi. The Director of Public Prosecutions filed a Replying Affidavit of P. C. Richard Labong, to oppose the motion.

The Applicants herein are before this court to face a charge of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the charge are that: **On 22nd August 2011, at Kiuu Village, Nginda Location in Murang'a County, jointly murdered Peter Irungu Mwirigi**. Their trial is yet to begin. Pending the hearing of the case, they beseech this court to release them on bond pending trial. Under **Article 49 (1) h** of the **Constitution**, the Applicants are entitled to be released on bond pending trial unless compelling reasons are given to the court to deny them that right. In the affidavit of P.C. Richard Labong, the Director of Public Prosecutions has urged this court not to grant the accused persons bail. It is deponed in the aforesaid affidavit that there is tension in the area and a breach of peace may occur if the accused persons are released on bail. It is further alleged that the accused persons are known members of the outlawed Mungiki Sect, hence members of public may lynch them if they are released on bond. These are the main reasons which the office of the Director of Public Prosecutions relied on as compelling reasons. The Applicants denied being members of the outlawed Mungiki Sect or any other proscribed society. They also denied knowledge of any evidence of tension at their home.

I have considered the grounds argued in support and against the application. In my view, the grounds raised by the office of the Director of Public Prosecutions cannot be regarded as compelling reasons. In the circumstances of this case, the offence is alleged to have taken place on 22nd August 2011, nearly a year ago. With profound respect, having considered the submissions of the Director of Public Prosecutions, I think tension must have reduced due to the period the accused persons have been in custody. There is therefore no cogent evidence to show that the accused persons are members of the outlawed Mungiki Sect, or any other proscribed society. In the circumstances, I am convinced the Applicants should be released on bond. Consequently, I allow the motion as prayed. The Applicants to be released upon signing a bond of Ksh.500,000/= with one surety of like sum.

Dated and delivered this 6th day of July 2012.

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J. K. SERGON
JUDGE

In Open Court in the presence of Mr. Ndirangu for Accused and Miss Maundu for the Director of Public Prosecutions.