



Case Number:	Criminal Case 13 of 2016
Date Delivered:	14 Dec 2016
Case Class:	Criminal
Court:	High Court at Embu
Case Action:	Ruling
Judge:	Bwonwong'a Justus Momanyi
Citation:	Republic v John Muriithi Ndwiga & 2 others [2016] eKLR
Advocates:	Mr. Momanyi for 1st Accused Mr. Andande for 2nd and 3rd accused Ms. Mbae for the state
Case Summary:	-
Court Division:	Criminal
History Magistrates:	-
County:	Embu
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CRIMINAL CASE NO. 13 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN MURIITHI NDWIGA**

**ANNE WANJA HARRISON.....ACCUSED**

**MARTIN WACHIRA MWANIKI**

**RULING**

1. This is an application for bail pending trial of the 2<sup>nd</sup> and 3<sup>rd</sup> accused. The prosecution through the affidavit evidence of No 73309 PC Kiprono Cheruiyot have opposed their release on the grounds set out in that affidavit dated 26<sup>th</sup> October, 2016.

2. In his affidavit, PC Kiprono Cheruiyot has deponed that the two accused amongst others are charged with the offence of murder. He has further deponed that after murdering the deceased, they fled from their fixed abode to unknown places. He has further deponed that the accused, John Muriithi Ndwiga, switched off his mobile phone for three weeks and that it was not until after the three weeks when he switched on his phone that he was tracked through his phone and found in Siakago, where he was arrested.

3. Furthermore, the said police officer has deponed that Ann Wanja Harrison also switched off her mobile phone and diverted her calls to voice mail for one month after which she switched it on and was similarly tracked via the phone and arrested at Gichiche in Runyenjes. He has also deponed that Martin Wachira Mwaniki also fled to unknown destination when he received information that John Muriithi Ndwiga and Ann Wanja Harrison had been arrested and as result surrendered himself at Siakago Police Station.

4. Additionally, he has deponed that police investigations have established that a key witness in this murder case namely Irene Njeri also fled to an unknown destination following the murder of the deceased person and has further deponed that the police have not been able to locate her for interrogation and recording of her further statement.

5. He has further deponed that John Muriithi Ndwiga, used the motor cycle registration No. KMDG 170R, which belonged to his employer Emma Nyambura and ferried Irene Njeri to Embu/Nairobi stage where she boarded a Nairobi Matatu to an unknown destination. He has finally deponed that it is for these reasons that the release on bail in terms of **Article 49 (h) of the 2010 Constitution** is opposed.

6. Mr Andande for the 2<sup>nd</sup> and the 3<sup>rd</sup> accused made lengthy submissions in support of the two accused persons being released on bond. Similarly, Ms Mbae for the respondent opposed their release with equal measure.

7. In the light of the affidavit evidence of No 73309 PC Kiprono Cheruiyot and the applicable law namely **Article 49 (h) of the 2010 Constitution of Kenya**, I find that the main issue for consideration is whether there are compelling reasons to deny the two accused persons of being released on bail. I believe the affidavit evidence of No. 73309 PC Kiprono Cheruiyot that the two accused persons amongst others fled from their fixed place of abode to unknown destinations.

8. I also believe the police officer's evidence that Ann Wanja Harrison also switched off her mobile phone and diverted her calls to voice mails for one month and that after switching it on she was tracked and arrested at Gichiche in Runyenjes. I further believe the evidence of the Police Officer that Martin Wachira Mwaniki fled from his known place of abode and subsequently surrendered to Siakago police station after he got information that John Muriithi Ndwiga (1<sup>st</sup> accused ) and Anne Wanja Harrison (2<sup>nd</sup> accused) had been arrested. I find from this affidavit evidence that the prosecution has established a case that does not warrant the release of the accused persons on bail, whom I find to be a flight risk. They are not likely to turn up for their trial if released on bail pending their trial

9. In view of the foregoing, I find that there are compelling reasons that do not warrant the release of the accused persons on bail within the meaning of **Article 49 (h) of the 2010 Constitution**.

10. It therefore follows that their release on bail is hereby rejected.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **14<sup>th</sup>** day of **DECEMBER, 2016**

In the presence of Mr. Momanyi for 1st Accused and Mr. Andande for 2nd and 3rd accused and Ms. Mbae for the state....

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**14.12.16**



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