



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL CASE NO. 7 OF 2017**

**REPUBLIC .....PROSECUTION**

**VERSUS**

**JUSTUS MUNYUA MWASYA.....ACCUSED/APPLICANT**

**R U L I N G**

1. This is an application made orally in court on 14/05/2018 for bail pending hearing and determination of the case.
2. The accused person is charged with murder contrary to Section 203 and 204 of the Penal Code.
3. The plea was taken on 18/07/2017 and a plea of not guilty was entered. Three (3) prosecution witnesses have been heard so far leaving seven (7) of them.
4. In his application dated 22/09/2017 the accused applied for bail which was declined on grounds that key witnesses had been threatened at the time he was at large and the prosecution feared that there is a probability of harming them with a view of destroying evidence.
5. This oral application is based on the grounds that the key witnesses have now testified and that there are no compelling reasons given by the prosecution for not releasing the accused no longer exist.
6. The application was opposed by the prosecution on grounds that the accused had no fixed abode. He had said earlier that he was a resident of Embu but it was later discovered that he had only rented a house there before he was arrested. The prosecution still fears that if the accused is released on bond he may not attend court.
7. The ruling of the court on the earlier bail application delivered on 5/12/2017 declined to grant bail on only one ground of threatening witnesses. The issue of having no fixed abode arose during the hearing of the said application but was not a reason for dismissing the application.
8. The prosecution did not deny that the key witnesses who had been threatened have already testified. As such, I find the prosecutions have no compelling reason for not releasing the applicant at this stage.
9. The court called for a home enquiry report on the applicant which was positive. The probation officer explained that she had interviewed the family of the accused and that of the deceased. The deceased's family still harbours some fear that in the event the applicant is released on bond, he may retaliate on the family members. The security of every citizen is in the hands of the State and governed by the law. The family of the deceased is entitled to protection of the law in the event that it is so desired.

10. The family of the applicant are willing to accept him back in his home area in Mwingi pending the disposal of the criminal case. The Chief of the area confirmed that the applicant is a person of stable character as he knew him before the commission of the offence and is not a security risk.

11. I find that no compelling reason have been presented by the prosecution for not releasing the applicant on bond.

12. It is hereby ordered that the applicant/accused person be released on bond of Kshs.300,000/= with two (2) sureties of similar amount.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 26TH DAY OF JUNE, 2018.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Mbaluka for applicant/accused person**

**Applicant/accused person**