

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 25 OF 2016

NICHOLAS KASUA MBITHI MUSOI.....ACCUSED/APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR/RESPONDENT

R U L I N G

1. **Nicholas Kasua Mbithi Musoi**, the Accused, is charged with **Murder**. He seeks to be released on bail pending trial. The application is based on grounds that the Accused is a student with a fixed abode within the jurisdiction of this Court. That the community he hails from is not against his release on bail and he is willing to participate in the trial until the end and is ready to be reporting to the Investigating Officer.
2. The application is opposed on the ground that the Applicant is likely to abscond as the charge he faces is serious.
3. It was submitted by **Mr. Mwalimu**, learned Counsel for the Applicant that the Applicant who has a home at **Matinyani** is willing to cooperate with the Investigation Officer and is not aware of any threats from the community. That prior to his arrest he had enrolled as a student in form one and is willing to look for a school within the jurisdiction of the Court.
4. Learned Counsel for State **Mr. Mamba** at the hearing deviated from what he deposed and stated that the State had no compelling reasons to have the Applicant (Accused) released on bail but he faced a serious charge.
5. This line of submissions prompted the Court to seek a report from the Probation Officer. A social enquiry carried out established that prior to his arrest the Applicant had engaged in farming activities but his brother who resides in **Malindi** got him a private school. He was to go back to start attending school. His age was given as 23 years old and had dropped out of school on his own accord.
6. Relatives of the Deceased were interviewed and they denied being opposed to the Applicant's release on bail as they had forgiven him.
7. Granting bail pending trial is discretionary. The proper test is therefore whether there are any compelling reasons requiring the Applicant's incarceration (**See Article 49(1)(h) of the Constitution**). The main consideration being if the Accused will turn up for trial.
8. Compelling reasons have been stated to include; the nature of the offence, the seriousness of the sentence to be imposed, the character and antecedents of the Accused, the likelihood that the Accused will fail to turn up for trial, the likelihood of interfering with witnesses, the requirement to protect the victim of crime and the Accused person himself, the relationship between the Accused and potential witnesses, the age of the Accused, public order and security imperatives (**See Alhaji Mujahid Dukubo – Asarin vs. Federal Republic of Nigeria S.C. 20A/2006**).
9. No doubt the offence herein is serious but it is bailable if there are no compelling reasons. The learned State Counsel has confirmed that no compelling reasons exist where the Accused should continue being incarcerated. It has been established that he has a fixed abode. What has not been demonstrated is the allegation that his relatives have secured a school for him.
10. In the premises the Applicant is granted bond of **Kshs. 800,000/=** with a surety in similar sum.
11. It is so ordered.

Dated, signed and delivered at Kitui this 27th day of November, 2018.

L. N. MUTENDE

JUDGE