



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 21 OF 2018

KATIWA ILAI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. **Katiwa Ilai** faces a charge of **Murder** contrary to **Section 203** as read with **204** of the **Penal Code (Cap 63) Laws of Kenya**. On the **29th** day of **November, 2018** he approached this Court by way of Notice of Motion seeking to be released on bail pending hearing and determination of the case.

2. The application is premised on the grounds that; the Applicant was arrested and detained in custody since **June, 2018** and to date he is facing trial in this case while held at the GK Prisons Kitui; the Applicant has been ailing since his incarceration in custody has attended treatment both at the GK Prisons Hospital Kitui, and the General Hospital Kitui, but his response to treatment is low and needs a further medical attention; the Applicant's home is in **Katonya, Kanyonyoo Sub-Location in Kwa Vonza Location** where he stays with the family and will not leave the jurisdiction of the Court. He is not a flight risk.; that there is nothing in the Accused's character, antecedents, association and/or community ties that is prejudicial to his being admitted to bail pending the hearing and determination of this case.

3. At the hearing **Mr. Kalili**, learned Counsel for the Applicant stated that the Applicant has been unwell and that he has been attending treatment in prison and the District Hospital.

4. In response, Learned Counsel for the State, **Mr. Mamba Vincent**, told the Court that there were no compelling reasons to deter the Applicant from being released on bail but stated that the charge is serious.

5. Circumstances which a Court must consider whether or not to grant bail were set out in the case of **Alhaji Mujahid Dukubo – Asari vs. Federal Republic of Nigeria SC 20A/2006** thus:

“- The nature of the offence.

- The strength of evidence which supports the charge.

- The gravity of the punishment in the event of conviction.

- The previous criminal record of the accused if any.

- The probability that the accused may not surrender himself for trial.

- The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him.

- Detention and protection of the accused.....” (Also see Republic vs. Danson Ngunyu & Another HCR.C No. 26 of 2008 – MSA).

6. A charge of murder is a serious one as it attracts upto a sentence of death. The Court however has the discretion to consider each case according to its circumstances. According to **Article 49(1)(h)** of the **Constitution** it is the Accused person's constitutional right to be released on bail unless there are compelling reasons necessitating his incarceration. It is therefore the duty of the State to demonstrate that compelling reasons exist which call for denial of the Accused's release on bail.

7. The learned State Counsel has confirmed that no compelling reasons exist where the Accused should continue being incarcerated.

8. In the premises the Applicant is granted bond of **Kshs. 500,000/=** with a surety in similar sum.

9. It is so ordered.

Dated, Signed and Delivered at Kitui this 19th day of December, 2018.

L. N. MUTENDE

JUDGE