



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITUI**

**CRIMINAL CASE NO. 17 OF 2018**

**STEPHEN NGONDE ILAI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. **Stephen Ngonde 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 **29<sup>th</sup> 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 apparently arraigned before Court on **27<sup>th</sup> June, 2018** or thereafter and has been in custody since then; that the applicant has a home and relatives living and residing within the jurisdiction of this Court, hence not a flight risk; that there is nothing in the character antecedents, association and/or community ties in relation to the Accused that is prejudicial to his being admitted to bail bond pending finalization of the trial herein; that the nature of the offence and the trial may take time to conclude.

3. At the hearing **Mr. D. M. Mutinda**, learned Counsel for the Applicant urged that the Applicant is not a flight risk, he has family members who will ensure he turns up for trial and he has demonstrated that he is a person of character and good antecedents.

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. That being the case, I hereby grant the Applicant bond of **Kshs. 500,000/=** with a surety in similar sum.

9. It is so ordered.

**Dated, Signed and Delivered at Kitui this 19<sup>th</sup> day of December, 2018.**

**L. N. MUTENDE**

**JUDGE**