



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 40 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MUSEMBI NZIOKI.....1<sup>ST</sup> ACCUSED**

**FESTUS MUTUA.....2<sup>ND</sup> ACCUSED**

**R U L I N G**

1. The application dated **30<sup>th</sup> June, 2015** brought pursuant to the provisions of **Article 49(1)(h)** of the **Constitution of Kenya** is for bail pending trial. It is premised on ground that: The 1<sup>st</sup> accused person is an outstanding teacher under the employment of the Teachers Service Commission currently teaching at **Kisekini Primary School** and stands to have his employment terminated owing to absence from duty; The 2<sup>nd</sup> accused person is an elderly man who has a history of ill health and mental instability therefore requires treatment which cannot be offered while in custody and there are no compelling reasons to deny them bail which is a constitutional right.
2. The 1<sup>st</sup> accused swore an affidavit stating that he has been diligent and outstanding teacher having won several awards; he is a role model and pillar of the society; he is married with three (3) children who depend on him; continued absence from duty will make him loose his job and he poses no threat to witnesses in the trial.
3. The 2<sup>nd</sup> accused person on the other hand stated that his continued incarceration will hinder him from seeking treatment and he poses no threat to witnesses.
4. The State opposed their release on bail through **No. 86288 Corporal Julius Rono**, the Investigating Officer, who deponed that if granted bail the accuseds will abscond. The seriousness of the penalty to be imposed upon conviction is an incentive for them to abscond and they may interfere with witnesses.
5. Consequent to the State opposing the accused persons' release on bail the court undertook to hear crucial witnesses' evidence prior to considering the accused persons plea to be released on bail. It emerged that the accused persons are the deceased's maternal uncles and prior to events that culminated into his death the deceased was suspected to have broken into a church with an intention of stealing.
6. The paramount consideration the court must have in mind when it considers releasing an accused person on bail is whether he will turn up for trial. It is alleged that the accused persons will abscond following the severity of the sentence that is likely to be imposed in case of a verdict of guilt being reached by the court. It has not been alleged that the offence was alleged to have been committed the accused persons avoided being arrested.
7. Another factor the court may consider is whether the accused persons will interfere with witnesses. It has been stated that the accuseds and PW1 are blood relatives. He has testified. It has not been suggested that they may interfere with the remaining witnesses. In the circumstances I find nothing of substance that is compelling enough to deter the accuseds being released on bail.
8. In the result I find the application having merit. Each accused person may be released on bond of **2 million** with a surety in a like sum.
9. It is so ordered.

**Dated, Signed and Delivered at Kitui this 24<sup>TH</sup> day of NOVEMBER, 2015.**

**L. N. MUTENDE**

**JUDGE**