



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI**

**CRIMINAL CASE NO. 56 OF 2018**

**LESITT, J**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**JOHN NDAYA KIMANI.....ACCUSED**

**RULING ON BAIL**

1. The accused person through Counsel Mr. Mbugua who was holding brief for Ms. Maina re-applied for release of accused on bail pending his trial.

2. The application for bail had already been argued after the defence counsel filed it on 19<sup>th</sup> November, 2018. It was argued on 11<sup>th</sup> December, 2018. The ruling of the court on the application is on record. The ruling is dated 13<sup>th</sup> December, 2018.

3. The effect of the ruling was deferral of bail ruling due to two factors:

**a) The prosecution was awaiting DNA results of an examination on a sample taken from the body of the deceased at post mortem.**

**b) The witnesses in the case and the deceased are family members of the accused. That the deceased was a young son of the accused and the family members were potential witnesses and it was prudent to await the DNA test results as outcome may change the outlook of the case and impact on the investigations which were since still ongoing.**

4. The accused has a right to be released on reasonable bond terms pending his trial. He has been in custody since 12<sup>th</sup> November, 2018. The prosecution did not oppose the application. They only pointed out that the investigations were not complete. The prosecution interviewed the mother of the deceased who is also wife to the accused in court. She was not opposed to the accused being granted bail.

5. The primary consideration in an application for bail is whether or not the accused person will turn up for his trial. Given the prosecution's submission, this issue is not part of their concern. There is no apprehension of the accused absconding, fleeing or failing to turn up for his trial. That leaves the court to consider the other minor issues which arise in this case.

6. No compelling reasons to deny bail have been advanced by the prosecution. I have noted the relationship between the accused and the potential witnesses. This is not a compelling ground to deny the accused bail.

7. Concerning the incomplete investigations, it has been seven months since the ruling by the court. No progress has been made in the investigations ever since. The Learned Prosecution Counsel Ms. Onunga, informed the court that the Government Chemist were yet to complete analyzing the samples sent to them.

8. Considering that there is no indication of when the awaited results will be availed, it would be unjust to have the accused remanded indeterminate as he awaits the results of the DNA analysis.

9. Having taken all these factors into consideration I will grant the accused bail in the following terms:

**a) Accused may be released on a cash bail of KShs.100,000/=.**

**b) In the alternative the accused may be released on a bond of KShs.250,000/= with one surety of like sum.**

**c) The accused is warned not to interfere with any of the prosecution witnesses or potential witnesses.**

**d) The accused should avail himself for his trial as and when required.**

10. The accused is warned that breach of any of the terms under (c) and (d) above may result in cancelation of his bond.

**DATED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY, 2019.**

**LESIT, J**

**JUDGE**