



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI**

**CRIMINAL CASE NO. 56 OF 2018**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**JNK.....ACCUSED**

**RULING ON BAIL**

1. The accused person **JNK** is facing trial for one count of murder contrary to **section 203** of the **Penal Code**. He is alleged to have murdered his 9 year old son **RM** on 15<sup>th</sup> October 2018.

2. A formal application by way of a Notice of Motion dated 19<sup>th</sup> November, 2018. The application is premised under **Article 49(1)(h)** of the **Constitution** and **Section 123** of **Criminal Procedure Code**. The application is predicated on five grounds namely:

a) That prior to the applicant's arrest the applicant had a family with children for which he was the main breadwinner, whereas he would seek to be released on bail/bond to enable him continue providing parental, care, control and affection for.

b) That the applicant is a young man who led a meaningful life and engaged himself in income generating activities and he seeks the court to consider this and release him on bond to continue fending for himself and engaging in meaningful tasks.

c) That the applicant is not aware of any compelling reasons to necessitate the denial of bail or bond as he is not in any way going to interfere with the witnesses besides he undertakes to abide by any bond terms set by the court.

d) That it is in the interest of justice that he be admitted to bond/bail pending trial as he is being ready and willing to abide by the terms set by the court and to attend court as and when required.

e) That any interests of justice tilt toward admitting the applicant bail/bond rather than denying him.

3. The application is also supported by an affidavit sworn by the accused of same date. In addition to giving personal background, the accused pledges his commitment to observe conditions of his release.

4. Mr. Kirimi holding for Mrs. Maina, advocate for the accused urged the court to grant lenient bond terms. Counsel urged that the deceased was still in the mortuary arguing that since accused was sole bread winner, burial of the child is yet to take place. Counsel urged that the accused needed to go back home to arrange for the burial.

5. Mr. Otieno Learned Prosecution Counsel did not oppose bail subject to findings by a Probation Officer. He urged court to call for a Pre-Bail Report in order to tell what the family of the deceased felt about the accused release on bond. Counsel also urged that he would request the court to give strict bond terms if it was mindful to release accused on bail.

6. As Counsel submitted two issues transpired. The first being that the accused was the father of the deceased. That also meant that the witnesses in the case are mostly members of the accused family court urged the Prosecution Counsel to find out from wife of the accused who was present in court, whether she opposed his release on bond. The indication given to the court was that she was not opposed.

7. The second fact which came out in the prosecution counsel's submission was that the State was awaiting results of DNA analysis on which this case hinges.

8. That submission has brought to the fore that the investigations into this case are not complete. The results awaited for could change the outlook of this case and the impact it may have to the investigations into the case. I find that it is rather too early to consider this application given the fact that the investigations are still ongoing.

9. For this reason, I defer the ruling on the application until such time that investigations into the case will be completed.

**DATED AT NAIROBI THIS 13<sup>th</sup> DAY OF DECEMBER, 2018.**

**LESIT, J**

**JUDGE**