



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**HIGH COURT CRIMINAL CASE NO. 105 OF 2015**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**EUGINE BARGETUNY .....ACCUSED**

**RULING**

1. The applicant **EUGINE BARGETUNY** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on the 25<sup>th</sup> day of October, 2015 at Tassia Estate in Embakasi Division within Nairobi County murdered Stephen Okoth.

2. He pleaded not guilty and by an application dated 13/10/2016 applied to be released on bond/bail pending trial which application was supported by his annexed affidavit allegedly sworn before Erick Ochieng, Advocate on 13/10/2016 in which it was deponed that the applicant has a permanent residence in Dina village in Webuye within Bungoma County where he resides with his parent namely Stella Nafuna Wenani and further that he is a young man who led a meaningful life and engaged in income generating activities in the form of A barber shop and should therefore be released on bond to enable him continue fending for himself.

3. It was deponed that the intended witnesses had been disclosed in the committal bundle served upon the accused and he undertook not to influence or interfere with them in anyway having been in custody since October, 2015.

**PRE-BAIL REPORT**

4. To assist the court in determination of the application, I ordered for pre-bail report which has been filed and in which it was stated that at the time of the offence the accused was employed as a beautician by his Aunt and upon his arrest the accused sister took away all his belongings from his rental house in Tassia Estate. It was stated that the victim was not known to the accused and therefore the same might not be a threat to other parties involved in the case.

5. On victim impact report, the officer was unable to get any response since the contact given allegedly went to a recipient who did not know or have any connection with the matter. The community from where the offence was committed is alleged to had been aloof and were unwilling to engage them in police case and were unaware of the case.

6. From the report it was concluded that the accused parents sought his release on bond and the accused who has no history of anti-social behavior has very supportive relatives willing to vouch for his court

attendance. However in the recommendations, the probation officer states that the situation on the ground are more overwhelming and call for the accused remaining in custody for his own protection which I find contradictory to the attitude of the community as stated in the report.

7. The Victim Protection Act now requires the court to get the view of the victims before any decision affecting them is reached at by the court. In view of the fact that the probation officer did not contact the family members of the deceased and further having pointed out the contradictions between the reports finding on the community attitude and the recommendation. I find and hold that the pre-bail report herein as presented is incomplete and not useful to court.

8. The probation office is hereby ordered to present a further comprehensive report prepared by another officer other than ADIKA MM to court within the next 14 days from the date herein.

DATED, SIGNED and DELIVERED at Nairobi this 2<sup>nd</sup> day of **March**, 2017

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

Mrs. Kinoti for the State

Miss Nyang for Mathenge for the Accused

Accused present

Tabitha court clerk