

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 1 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

DAVID KIILU KIITI.....ACCUSED

RULING

1. The Applicant who is charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code** approached this court by way of Notice of Motion seeking to be released on bail pending trial.

2. The application is premised on grounds that: the right to be released on bail is enshrined in the **Constitution, Article 49(1)(h)**; following his arrest he has been in custody; there are no compelling reasons to disentitle him bail; he is a Kenyan Citizen with a fixed place of abode, married with children; he is willing to abide with all the terms and conditions of bond to be imposed; he will not abscond or interfere with witnesses or the Prosecution of the case; He is a sole breadwinner and has an elderly mother who depends on him.

3. In response thereto the state opposed the application through an affidavit sworn by **No. 100604 P C Montgomery Ondego** who stated that the accused was likely to abscond if released on bond as the community is bitter with him and may lynch him. The police having supplied the accused with statements he may interfere with witnesses who live in the same locality with him.

4. Bail is an accused person's constitutional right. The primary consideration is whether the accused will turn up for trial.

5. There may be other factors the court may consider like: failure of the accused to surrender to bail on previous occasions, the likelihood of the accused interfering with witnesses, the character of the accused and whether he has a settled address. **(See Mogotsi and Another vs. The State 1990 BLR 142 (HC)).**

6. It is not enough for the Prosecution to make allegations that the accused is likely to interfere with witnesses or that he may abscond. Denial of bail unless there are compelling reasons hinges on infringement of his/her constitutional right. It is for these reason that the Prosecution must not make allegations without any basis.

7. The Investigation Officer was required to go an extra mile of availing evidence to establish what connection the Applicant has with these people in his locality whom he may interfere with. There should have been an attempt to give incidents establishing actual threats on the accused person's life that may be an incentive to make him a flight risk.

8. Having considered the application in totality I allow the application by granting the Applicant bond of **Kshs. 1.5 Million** with a surety in an even sum.

9. It is so ordered.

Dated, Signed and Delivered at Kitui this 9th day of December, 2015.

L. N. MUTENDE

JUDGE