



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 71 OF 2014

REPUBLIC.....STATE

versus

NICHOLAS MBITHI YULU.....ACCUSED

RULING

1. **NICHOLAS MBITHI YULU**, the accused is charged with the **offence of murder contrary to section 203 as read with section 204 of the Penal code**.
2. By a Notice of Motion dated 25th day of March 2015 brought pursuant to the provisions for **Article 49(1)(h)** of the Constitution of Kenya, he seeks to be released on bail pending trial.
3. The application is premised on grounds that the applicant has a permanent place of abode hence he is not a flight risk; he has good antecedents and is of high moral standing; he is ready and willing to abide by the terms set by the court. He is a law abiding citizen and there are no compelling reasons to deter him from being admitted to bail.
4. In an affidavit in support of the application the applicant depones that he is 22 years old and a student at Multimedia University pursuing a Bachelor of Science degree; Mathematics and Computer Science – His admission number being 1ST-224-078/2012. He has no intention of interfering with witnesses and will attend court whenever required.
5. The application is opposed by the state. An affidavit in reply to the application was sworn by No. 77604 Cpl Wesly Cheruiyot where he deponed that the applicant is a flight risk as he went into hiding after the commission of the offence having been arrested in December 2014, a year later. The applicant closed down his shop (kiosk) at his rural home. He was arrested at Kibwezi where he had gone to hide therefore tracing him may not be easy. Immediately after the commission of the offence he deferred his studies at the university for three (3) years. He hails from the same locality with the witnesses therefore there is a likelihood of interfering with them which will affect the smooth hearing and determination of the case. He called upon the court to consider the nature of the seriousness of the offence and the severity of sentence as compelling reasons to deny the accused person bail.
6. The purpose of releasing an accused person on bail is basically to avoid incarcerating him/her which may be interpreted to be a punishment prior to the case being proven. The importance of the person's liberty is recognized by the law. However, where there are compelling reason, bail may be denied (See Article 49(1)(h) of the Constitution). The discretion to grant bail must be exercised judicially and judiciously.
7. It has been stated that in granting bail some factors must be taken into consideration which include:-
 - ***The likelihood of the accused person attending court/trial.***

- *The likelihood of the person interfering with the proper investigations.*
- *The nature of the offence and the severity of the penalty.*
- *Criminal antecedents of the accused person.*

8. It has been stated that the applicant is a flight risk because after the commission of the offence he went into hiding. He was arrested a year later. Counsel for the applicant, Mr. Musyimi stated that the accused is not a flight risk as he is a student who would wish to resume his studies. It was established by the prosecution that indeed the accused person / applicant is a student at Multimedia University. However, he deferred his studies for three years. And he closed down his shop / kiosk in his rural home and went into hiding after the alleged offence was committed.
9. The offence was committed on 26th December, 2013 and the applicant was arraigned in court on the 1st December 2014, a year or thereabout later. In his affidavit the applicant states that he is a young adult aged 22 years old and an orphan but he does not explain anything to do with his absence from his home or his whereabouts for a duration of one year after the offence was committed. This is evidence of the predisposition to abscond. If he flees then ensuring that justice is done becomes a problem.
10. Considering the peculiar circumstances of this case attending trial or fleeing from the area of jurisdiction of this court will depend on the accused person's capacity. Weighing all the factors it may be prudent to allow the applicant to continue with his studies. However, since he has a predisposition to flee, stringent bail terms are called for.
11. Consequently I grant him bond of 3 million with three (3) sureties of a similar amount.
12. Upon his release he will be required to report to the OCS Sultan Hamud Police Station at the beginning of every month until further orders.
13. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 6th day of July, 2015.

L.N. MUTENDE

JUDGE