

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

HIGH COURT CRIMINAL CASE NO 6 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

WOLI ABDULLAHI BARE alias WILLI.....ACCUSED

RULING

1. **WOLI ABDULLAHI BARE** hereinafter “**The Accused**” was arrested on the **17th day of July, 2015**. He was arraigned in court on the **21st day of July, 2015** to be charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The plea was deferred to **30th July, 2015**. At the second appearance in court the plea was deferred, yet again till **30th September, 2015**.
2. On the stated date, the plea was not read because the accused would only communicate in Somali language. Counsel on record **Mr. Abdi** notified the court of his intention to seek the accused’s release on bail. **Ms Amojong** who appeared for the State took note of that fact.
3. A formal application was filed and served upon the state as directed by the court. The same is unopposed.
4. When it came up for hearing the learned state counsel sought an adjournment based on the fact that they had not responded to it. It was her explanation that though she received the file on Friday, the previous week the instructions from the Investigating Officer were important which she was lacking. She was not in a position to tell whether or not they were to object to the application.
5. This was dismissed by the defence counsel Mr. Adan as inefficiency and laxity on the part of the prosecution which I agree with.
6. Basically, the application is for bail pending trial. It is based on the grounds that the accused having appeared in court on the **17th July, 2015** has been held in custody ever since. The continued confinement of the accused infringes on his constitutional right. He is not a flight risk. He has a young family and he is the sole bread winner; there is no nexus between the crime and the accused, therefore his continued detention is unjust.
7. An affidavit was sworn in support of the application where the deponent reiterated what is stated in the body of the application.
8. Bail is a constitutional right. An accused person should be released unless there are compelling reasons requiring his incarceration. **(see Article 49(1)(h) of the Constitution)**
9. As clearly pointed out by the defence counsel the accused person having been in custody for over two (2) months , if the prosecution intended to object to his release this would have been documented. The prosecution had notice of the intention to apply for bail Eight (8) days prior to today.
- 10.No effort has been made by the prosecution to cause the investigating officer to file the affidavit

in response if they intended to oppose the application.

The learned State Counsel who has been in custody of the file must have perused it therefore she could have been in a position to notify the court whether or not reasons existed that required further incarceration of the accused. This court will not aid the prosecution in their indolence.

11.The application being unopposed, it is not denied that the accused presented himself to the police. It is not denied that he is not a flight risk. That being the case I grant the accused bond of Ksh.400,000/- with a surety in a like sum.

-It is so ordered.

DATED, SIGNED and DELIVERED at KITUI this 6th day of OCTOBER, 2015

L.N. MUTENDE

JUDGE