



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL REVISION CASE NO.E120 OF 2021**

**JANET CHEPKORIR.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**REVISION RULING**

1. The record called for consideration in this Revision Application is the Criminal Proceedings before Hon. **F. M. NYAKUNDI (SRM)** in Kericho Criminal Case No.E1254 of 2021.

2. The Honourable Trial Court gave an order on 30/11/2021 in the following terms:-

***“THAT the Accused Person’s bond terms be and are hereby suspended until her husband surrenders himself to the Police”***

3. The Applicant has filed this Revision Application seeking revision of the said order by letter dated 14/12/202.

4. In the said letter, the Applicant has stated through her Advocate that her bond was approved on 26/3/2021 and she had always come to Court as and when required.

5. She further stated that on 30/11/2021 when the Prosecution witnesses testified, they said the Accused Person’s husband one **GEOFFREY KIPKOECH BIEGON** was the perpetrator of the offence the Accused was charged with.

6. The Accused was charged with Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.

7. The particulars of the charge are that on the night of 26<sup>th</sup> January, 2021 at Chepnangai Village, Belgut Sub-County within Kericho County, the Accused Person jointly with others not before Court unlawfully killed **DENIS KIRUI**.

8. The High Court has supervisory power over the subordinate Courts under the constitution and also Under Section 362 of the Criminal Procedure Code (CPC).

9. Section 362 of the Criminal Procedure Code states that:-

***“The High Court may call for and Examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any findings, Sentence or Order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.***

10. I have perused the record and I find that the order to cancel the Accused Person’s bond until her husband is arrested is illegal and a violation of the Accused Person’s rights to a fair trial and is tantamount to vicarious liability in a criminal matter.

11. The Accused Person is properly charged with others not before Court and there is no law that says that the others have to be arrested before the Trial proceeds.

12. I find that the Accused Person has not violated her bond terms and remanding her until her husband is arrested is tantamount to punishing her without a hearing.

13. The era of detention without a trial is over in Kenya. We are now in the Constitutional dispensation with an array of basic human rights to be enjoined by all and sundry.

14. The only reason why an Accused should not be released on bond is where there are compelling reasons not to grant bond.
15. I find that the order dated 30/11/2021 is illegal and I accordingly set it aside and reinstate the bond terms of the Accused Person.
16. I also direct that the hearing proceeds since the Accused Person is charged jointly with others not before Court.
17. The original file to be returned to the Trial Court for further action.
18. Mention on 23/12/2021 before the Trial Court for a hearing date.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**A. N. ONGERI**

**JUDGE**