



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 42 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**GLADYS NYAMBURA GITHINJI.....ACCUSED**

**RULING**

This is a short ruling regarding the application made by the Director of Public Prosecution (DPP) through the prosecution counsel in this case that the DPP be allowed to withdraw these charges against the accused person. Gladys Nyambura Githinji is charged before this court with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the offence are that on the 12<sup>th</sup> day of May 2016 at Uhuru Estate in Makadara Sub-County within Nairobi County she murdered Faith Wanjiku Nyambura and Lewis Githinji. The accused was arraigned before this court on 24<sup>th</sup> May 2016 but the plea was not taken because the accused did not have legal counsel. She was remanded in custody until 31<sup>st</sup> May 2016. On that day the prosecution applied to withdraw the charges and informed the court that they intended to charge the accused with infanticide. This court declined that request because the accused did not have legal representation.

On 8<sup>th</sup> June 2016 Mr. Otieno, advocate, came on record for the accused. He sought more time to discuss the matter with the accused before responding to the application. This was granted and when court resumed on 15<sup>th</sup> June 2016 Mr. Otieno objected to the application by the prosecution to withdraw the charges. Mr. Otieno asked the court to decline the application and order speedy trial citing constitutional breach against his client. He specifically told the court that the accused had been held in custody longer, from 12<sup>th</sup> May 2016 to 24<sup>th</sup> May 2016, before she was produced in court. I ordered that the prosecution furnish this court with the order of the lower court extending the stay in custody of the accused person as well as service of the committal bundles to the defence.

I have seen the order from the lower court in Chief Magistrate's Miscellaneous Application No 271 of 2016 dated 13<sup>th</sup> May 2016 allowing police seven working days to detain the accused for purposes of investigations in respect of this case. I am satisfied that the deceased was legally detained pending investigations. I have also seen a letter dated 17<sup>th</sup> May 2016 from Dr. Gateere of Mathari Hospital indicating that the accused was suffering from postpartum depression.

In respect of the application to withdraw charges against the accused by the prosecution with intention of other charges on the same facts I have read the committal bundles and I am satisfied that this withdrawal will not prejudice the accused in any way. I will and do hereby allow the application by the prosecution. The charge of murder against the accused in High Court Criminal Case No. 42 of 2016 is hereby terminated and the accused person discharged under section 82 of the Criminal Procedure Code. Orders shall issue accordingly.

**Dated, signed and delivered this 30<sup>th</sup> day of June 2016.**

**S. N. Mutuku**

**Judge**