



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO. E036 OF 2021**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MAGDALENE NYATHIRA MBURU.....ACCUSED**

**RULING**

1. **MAGDALENE NYATHIRA MBURU** was charged with the offence of murder. On 23<sup>rd</sup> June, 2021 she pleaded not guilty. The accused has applied for bail pending her trial.
2. The prosecution did not oppose her bail application except that the prosecution sought that the terms of accused's release be strict in view of the seriousness of the charge she faces.
3. **Article 49(1)(h)** of the Constitution provides that unless there are compelling reasons why an arrested person should not be granted bail/bond, bail/bond should be granted pending their trial. There were no compelling reasons given either by prosecution or the defence.
4. In considering the accused's application, it is important to bear in mind that the purpose of granting bail/bond is to ensure that an accused does attend trial when required to do so. Further, the court in setting the terms of release on bail/bond should bear in mind the seriousness of the charge the accused faces. These two elements were discussed in the case **REPUBLIC VS. ROBERT ZIPPOR NZILU (2018) eKLR** as follows:-

*“13. While agreeing with Justice Ibrahim Tanko Muhammad's judgment, Justice Niki Tobi gave an illuminating and persuasive decision when he said:-*

*“The main function of bail is to ensure the presence of the accused at the trial... Accordingly, this criterion is regarded as not only the omnibus one but also the most important. As a matter of law and fact, it is the mother of all the criteria. The Working Party on bail procedure in Magistrate's Courts in the United Kingdom said in paragraph 22 of the Report:-*

*“There are a number of other considerations to be taken account in deciding a bail application, but in general they are not in themselves reasons for granting or refusing bail, but indicators of the likelihood or otherwise of the defendant's appearance.’...”*

10. Gravity of the offence as a consideration was appreciated by **Mboghli Msagha, J** in **Criminal Application No. 319 of 2002 Priscilla Jemutai Kolonge vs. Republic** (unreported) at page 3, wherein he held as follows:-

*“However, the nature of the charge or offence and the seriousness of the punishment if the applicant is found guilty must be considered in applications of this nature. I subscribe to the observation that where the charge against the accused is more serious and punishment heavy, there are more probabilities and incentive to abscond, whereas in case of minor offences, there may be no such incentive.”*

5. The accused was described as being a mother of young children. She is of fixed abode and her family is willing to stand as sureties. In view of the above and because there are no compelling reasons to deny the accused bail, the accused will be granted bail.

**DISPOSITION**

6. **MAGDALENE NYATHIRA MBURU** is hereby released on her own bond of Kshs.500,000/= with two sureties of similar amount.

7. The accused shall not interfere with prosecution's witnesses.

***RULING DATED, SIGNED and DELIVERED at KIAMBU this 5<sup>TH</sup> day of MAY, 2021.***

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Ndege

Accused : present

For the Accused: Mr. Muguria

Respondent: Ms. Kathambi

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**