



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E003 OF 2021

REPUBLICPROSECUTOR

VERSUS

DAVID KAGWATHA MUNAI.....ACCUSED

RULING

1. **DAVID KAGWATHA MUNAI** is charged with the offence of murder. He pleaded not guilty. He made an application to be released on bail/bond. His learned counsel Mr. Ogeto submitted that the accused has fixed abode. The accused has undertaken to avail himself for his trial when required. His counsel therefore prayed he be released on reasonable terms.

2. The prosecution did not oppose the bail application but prayed that the terms of his release be commensurate to the offence.

ANALYSIS

3. The constitution, under **Article 49(1)(h)** guarantees the right of any one arrested not to be denied reasonable bail/bond, pending trial, unless there are compelling reasons. **Article 50(2)** provides that an accused is presumed innocent during his arrest, and should be granted bail/bond and even at his trial.

4. The prosecution was right to request the court to grant terms of the accused's release on bail/bond to be commensurate to the offence. This indeed is what the court stated in the case **REPUBLIC VS. ROBERT ZIPPOR NZILLU (2018) eKLR** thus:-

“10. Gravity of the offence as a consideration was appreciated by Mbogholi 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.’”

5. Since the accused who has not yet been proved guilty has a right to be released on bail/bond and because there are no compelling reasons to deny him that right, I grant the following orders:-

(a) **David Kagwatha Munai** is granted bond of Kshs.500,000/= with two sureties of similar amount.

(b) **David Kagwatha Munai** shall not while this trial is pending contact or interfere with the prosecution's witnesses

RULING DATED, SIGNED and DELIVERED at KIAMBU this 10th day of JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Applicant/accused: present

Respondent/prosecutor: Mr. Kasyoka

For Accused No appearance

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE