



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO. E032 OF 2021**

**BETWEEN**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**AMOS GODEKA KISAMBU.....ACCUSED**

**RULING**

1. **AMOS GODEKA KISAMBU** is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal code**. He pleaded not guilty to the charge and his trial date is yet to be set. He has applied that he be released on bail/bond pending the conclusion of his trial.

2. The application for bail was supported by the accused's father, *Mr. Apolo Kisambu*, who appeared online before the court. The accused's said father stated that the accused has not been involved in criminality prior to his arrest for the present offence. The father also gave assurance to the court that he will ensure his son, the accused, does attend court when required.

**ANALYSIS**

3. The accused is a 22 year old young man. His bail application was not opposed by Director of Public Prosecution (DPP) save that the DPP requested that the terms of accused's release on bail/bond be commensurate to the seriousness of the offence.

4. The nature/gravity of the offence is indeed material and ought to be considered on an application for bail/bond. This was so stated by Justice *Mbogholi Msagha* (as he then was) in the case **PRISCILLA JEMUTAI KOLONGEI VS. REPUBLIC (2002) eKLR** 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. It is also of importance to bear in mind that the constitution under **Article 49(1)(h)** provides that an arrested or accused person has right to be released on bond or bail on reasonable conditions pending charge or trial, unless there are compelling reasons not to. It is clear from that provision that the Constitution places premium on a person's liberty. That right of liberty was discussed in the case **REPUBLIC VS. DIANA SULEIMAN SAID & ANOTHER (2014) eKLR** thus:-

*“14.The Supreme Court of India in the Deokar case cited its previous decision in MASROOR V. STATE OF UTTAH PRADESH AND ANOR. . 2009) (14) SCC 286 as follows:-*

*“There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.”*

6. The accused herein will therefore be granting bond because there is no compelling reason not to do so.

**DISPOSITION**

7. The court makes the following orders:-

(a) **Amos Godeka Kisambu** is granted bond of Kshs.1 million with one surety of Kshs.2 million.

(b) **Amos Godeka Kisambu** is granted his bond on condition that he attends court when required and that he does not interfere with prosecution's witnesses.

**RULING DATED AND DELIVERED AT KIAMBU THIS 18TH DAY OF NOVEMBER, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Maurice

For DPP: - Mr. Kasyoka

For Accused: - Ms. Kiarie

Accused : - Present

**COURT**

RULING delivered virtually.

**MARY KASANGO**

**JUDGE**