



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E036 OF 2021

BETWEEN

MAGDALENE NYATHIRA MBURU..... ACCUSED

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. **MAGDALENE NYATHIRA MBURU**, has a pending trial for the offence of murder. By this Court's Ruling of 5th May, 2021 the accused was ordered to be released from custody on her own bond of Kshs.500,000/= and two sureties of similar amount.

2. The accused has filed an application dated 16th July, seeking review of that order of 5th May, 2021.

3. The application is based on the grounds that:-

(a) The terms of release on bond were stiff and unfavourable.

(b) That the accused is not a flight risk.

(c) That the accused has a constitutional right to be released on bond/bail on reasonable grounds.

4. I have considered the application and the supporting affidavit.

5. The accused is facing a serious charge. It is necessary for the bond terms to be commensurate to the seriousness of the offence. In this regard, I cite the case of **REPUBLIC VS. MILTON KABULIT & 60 OTHERS (2011) eKLR** as follows:-

“My understanding of Section (sic) 49 (1) (g) (h) is firstly, that the right of an arrested person to bond or bail in respect of any offence is solely at the discretion of the court seized of the application. Secondly, the only accused entitled to a right to an automatic bond or bail are those charged with offences (which may be referred to as “petty offences”) the punishment of which (if found guilty and convicted) is either a fine only, or imprisonment for a term of less than six months”

6. Bearing the above in mind, I find and hold the terms of release on bond issued by the Ruling of 5th May, 2021 are commensurate to the offence and are reasonable. The application therefore is declined.

7. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For DPP :- Ms. Kathambi/Kasyoka

For Accused :- Mr. Mukuria

Accused : **MAGDALENE NYATHIRA MBURU:- Present**

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE