



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL APPLICATION NO. E014 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

ALFRED NYABUTO ATANI *alias* BABA MICHELLE.....ACCUSED

RULING

1. The Constitutional provisions in respect to an arrested person are that an arrested or accused person who is not yet proved guilty should not be kept in custody unless there are compelling reasons to do so, such as to protect the public or to protect the integrity of the trial. Bail/bond is intended to ensure an accused person does appear at his trial. This was restated in the case **REPUBLIC VS. ROBERT ZIPPOR NZILU (2018) eKLR** thus:-

“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.’”

2. **ALFRED NYABUTO ATANI *alias* BABA MICHELLE** pleaded not guilty to a charge of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. His trial date is yet to be set. In the meanwhile, he applied that he be released on bail/bond on reasonable terms.

3. His learned counsel informed the court that the accused is a father of 4 children. He is the sole bread winner of those children. He is not a flight risk.

4. The application was not opposed by the prosecution counsel.

5. There being no compelling reason to deny the accused bail/bond, I order as follows:-

(a) The accused shall be released on a bond of **Kshs.500,000/=** (Five Hundred Thousand) with one surety of similar amounts.

(b) The accused shall not interfere with the prosecution’s witnesses who include his children. He shall therefore not have the custody of his children until the conclusion of this case.

RULING DATED AND DELIVERED AT KIAMBU THIS 3RD DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

Accused: Present

For Accused: ... Ms. Gathua

For DPP: Mr. Kasyoka

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE