



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. E019 OF 2021

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

1. NNORUKA KENNETH AZUBUIKE

2. UDENZE KENNETH ODIKPO.....ACCUSEDS

RULING

1. **NNORUKA KENNETH AZUBUIKE** and **UDENZE KENNETH ODIKPO** have applied for bail. They were charged on 26th April 2021 with the offence of murder. They pleaded not guilty.

2. **Article 49(1)(h)** of the Constitution provides that an arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released.

3. The accused are Nigerian nationals and understandably DPP requested the court to consider to have the accused deposit their passports in court as a condition of their release.

4. The purpose of granting bail is to ensure an accused does attend his/her trial. This indeed was stated in a case citing another case that is **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.”

5. **Justice Mbogholi Msagha** (as he then was) stated, and I concur with is Lordship’s holding in the case **PRISCILLA JEMUTAI KOLONGE VS. REPUBLIC**, which case was cited in the case of **REPUBLIC VS. ROBERT ZIPPOR NZILU** (supra) 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.”

6. With that in mind, and because there are no compelling reasons to deny the accused the order they seek, I grant the following orders:-

(a) Each of the accused shall be released on their own bond of Kshs.1 million (one million) with two sureties each of similar amounts.

(b) Each of the accused shall deposit their passports at this Court before their release.

RULING DATED AND DELIVERED AT KIAMBU THIS 1ST DAY OF JULY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

Accused: both present

For Accused: Mr. King

DPP: Mr. Kasyoka

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE