



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.438 OF 2019

MARY ANYANGO OUMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Mary Anyango Ouma is facing a charge of **trafficking in narcotic drugs** contrary to **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances (Control) Act**. The particulars of the offence were that on 2<sup>nd</sup> April 2019 at KQ Cargo in Jomo Kenyatta International Airport, Nairobi County, the Applicant, jointly with others before and not before court, trafficked in heroin concealed in two black home theater speakers weighing 12,041.7 grams with a market value of Kshs.36,125,100/-. When the Applicant was arraigned before the trial magistrate's court, she denied the charge. Her application to be released on bail pending appeal was allowed on condition that she executes a bond of Kshs.5 million with one surety of the same amount or alternatively deposit a cash bail of Kshs.3 million.

Aggrieved by this decision, the Applicant made an application to this court dated 26<sup>th</sup> September 2019 seeking to have the said bond terms reviewed. The Applicant complains that the said bond terms imposed were so onerous and manifestly excessive that it amounted to denial of the bail pending trial. The Applicant stated that she was a single mother and unemployed. She came from a modest family who cannot afford such bond terms. She had been in custody since 13<sup>th</sup> April 2019. The chances that the case would be concluded soon was remote. In the circumstances, she pleaded with the court to review the bond terms and impose appropriate affordable bond terms. She suggests that she should be released on a cash bail of Kshs.100,000/-. Mr. Ondieki for the Applicant, reiterated the above grounds and added that the bond terms imposed negated the constitutional presumption of innocence on the part of the Applicant. He pointed out that the Applicant was not a flight risk and therefore should be released on bail pending trial in light of the fact that eight prosecution witnesses were yet to testify.

Mr. Momanyi for the State opposed the application. He observed that the offence that the Applicant is facing is serious. The bond terms imposed reflected the serious nature of the charge. He urged the court to disallow the application in view of the fact that the trial court had already acceded to the Applicant's request for reduction of bond terms. The bail terms had been reduced to Kshs.2 million cash bail. There were no reasons advanced for this court to further reduce the bond terms.

The issue for determination by this court is whether the Applicant made a case for this court to review the bond terms that were imposed by the trial court. It was clear to this court that the Applicant is facing a serious charge that, if convicted, will result in the Applicant serving a long stretch in prison. This court is also not oblivious of the assertion by the Applicant's counsel to the effect that at this stage of the proceedings, the Applicant is presumed innocent. The Applicant is of the view that the bond terms imposed are so onerous as to negate her constitutional right to be granted bail pending trial. On the other hand, the prosecution has submitted that the bond terms imposed (and later reviewed by the trial court) was favourable and reflected the serious nature of the charge that the Applicant is facing.

This court agrees with the prosecution that indeed the bond terms imposed reflect the serious nature of the charge that the Applicant is facing. Any substantial reduction in the bond terms would serve as an incentive for the Applicant to abscond from the jurisdiction of the court. Furthermore, this court takes judicial notice of the fact that the charge that the Applicant is facing has an international element to it. That factor makes the court cautious when considering whether or not the bond terms that were imposed by the trial court were suitable in the circumstances. This court notes that the trial has already commenced. Several witnesses have testified. The Applicant is not alleging that the prosecution witnesses have not been availed before court when the trial has been scheduled. That being the case, this court sees no reason to interfere with the bond terms that were imposed by the trial court.

In the premises therefore, the application lacks merit and is hereby dismissed. The trial court's file shall be returned to the court for trial and final conclusion of the case. It is so ordered.

DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY 2020

L. KIMARU

JUDGE