

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.166 OF 2017

JOSEPH MUTUA KIMEU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Joseph Mutua Kimeu is facing five (5) counts of **trafficking in narcotic drugs** contrary to **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances (Control) Act**. He is also facing one (1) count of **unlawful possession of identity card belonging to other persons** contrary to **Section 14(1)(f)** of the **Registration of Persons Act**. He has further been charged with **force presentation** contrary to **Section 14(1)(j)(i)** of the **Registration of Persons Act**. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charges. He applied to be released on bail pending trial. After considering his application, the trial court allowed the Applicant's application. The Applicant was released on bail pending trial on condition that he posts bond of Kshs.5 million with three sureties of the same amount. The Applicant was aggrieved by this decision and has filed an application before this court seeking revision of the said terms of bond.

Mr. Mwaura for the Applicant told the court that the Applicant is presumed innocent until proven guilty. He submitted that the bond terms imposed by the trial court were such that it amounted to denial of the Applicant's constitutional right to be granted bond. He complained that the bond terms that were imposed were stiff and unattainable. There was no reason for the court to imposed such stiff bond terms yet the Applicant is willing and ready to abide by any terms that may be imposed by the court to secure his release on bond pending trial. The Applicant pleaded with the court to consider the fact that his family and business has suffered during the period that he has been in remand custody. He was willing to post a cash bail of Kshs.250,000/- or post a bond of Kshs.1 million. His brother was willing to stand surety on his behalf. He urged the court to allow the application.

Ms. Kimiri for the State opposed the application. Whereas she acknowledged that the Applicant was presumed innocent until proven guilty, she submitted that the Applicant faced serious charges that, if convicted, may result in the Applicant being sentenced to serve life imprisonment. It was therefore imperative that the court takes into account these factors when determining whether or not to release the Applicant on bail pending trial. She submitted that there was likelihood that the Applicant would abscond from the court if he is released on bail pending trial. To secure his attendance, the trial court rightly and correctly imposed stiff bond terms. She urged the court to dismiss the Applicant's application.

This court has carefully considered the rival submission made by the parties to this application. The issue for determination is whether the Applicant made a case for the court to revise the bond terms that were imposed by the trial court so as to secure his release on bail pending trial. The **Constitution** under **Article 49(1)(h)** grants any person charged with a criminal offence the right to be released on bail pending trial unless there are compelling reasons to make the court reach a contrary finding. The **Constitution** does not define what constitutes "**compelling reasons**". However, courts have rendered decisions that articulate what constitutes compelling reasons and include the following: *the nature of the charge, the seriousness of the punishment, the strength of the prosecution case, the character and antecedents of the accused, the failure of the accused to honour bail terms previously granted, the likelihood that the Accused will fail to attend court during trial, the likelihood of interfering with witnesses, the need to protect the*

victim of crime and the accused person, the relationship between the accused and potential witnesses, the age of the accused, the flight risk, whether the accused person is gainfully employed, public order, peace and security imperatives. (See ALHAJI MUJAHID DUKUBO-ASARIN Vs. FEDERAL REPUBLIC OF NIGERIA S.C. 20A/2006). In addition, the **Bail and Bond Policy** recently published by the National Council on Administration of Justice requires the court to lean towards granting bail to accused persons unless the compelling reasons are such that the court will have no option but to deny such an accused person the right to be released on bail pending trial. The prosecution is required to provide evidence of the compelling reasons to deny the accused person bail.

In the present application, the Applicant was released on bail pending trial. However, he was dissatisfied with the terms that were imposed to secure his release on bail pending trial. This court agrees with the Applicant that in certain situations the bond terms imposed may be such that, for all intents and purposes, it amounts to denial of constitutional right of bail to an accused person. The Applicant is a Kenyan. He has a family. He operates a business in Kenya. He is presumed innocent until the conclusion of his trial. Although he is facing serious charges that may result in a long custodial sentence, the prosecution did not place any material before the trial court to indicate that the Applicant is likely to abscond and fail to attend court if he is released on bail pending trial. This court is convinced that the Applicant has placed sufficient grounds for this court to revise the bond terms that were imposed on him.

In the premises therefore, the decision of the trial court granting the Applicant bail pending trial is upheld but the terms imposed therein is varied and revised so that the Applicant shall be released on a bond of Kshs.1 million with one surety of the same amount and a cash bail of Kshs.500,000/-. It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OF JULY 2017

L. KIMARU

JUDGE