

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CR. REV. NO 433 OF 2017

ADAN ABDI ABDULE.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The Applicant has asked that the bond terms be reduced. He was charged with being suspected to be smuggling a human being. Under **Section 53(2) of the Kenya Citizenship and Immigration Act 2011**, the offence is punishable by a fine of Kshs. 500,000/= or an imprisonment of a term of 3 years.

It is a cardinal principle in granting bail that bail/bond terms should be commensurate with the offence. In granting bail/bond, the court must bear in mind that the right to bail is Constitutional and must not be derogated unless there are compelling reasons (**see Article 49(1) (h) of the Constitution**). That is why, in according the right, the court must not grant such high bail terms that an accused cannot afford. This would amount to giving with one hand and taking away with the other hand. With these observations, the court must play a very delicate balancing act so as to ensure both the right of the accused is observed whilst observing the rule of law.

With the above observation, it is my view that the bond terms granted to the Applicant were too high and punitive which would require the interventions of the Court. But again, another balancing act plays in; the court must consider that the Applicant is a foreigner and therefore the bond terms granted should be such that he is able to attend court when and if required to. In this regard, cash bail is not appropriate.

Let me also comment that it has not been demonstrated that the Applicant holds two passports. Although his passport is with the Immigration Department, the court cannot take the risk of granting him cash bail as that may not assure it of his attendance.

In the upshot, the application succeeds. I set aside the bond terms granted at the Magistrate's Court. I substitute the same with an order that the Applicant is admitted to bond of Kshs. 300,000/= with two sureties of a similar amount. The sureties must be Kenyan nationals. They shall be assessed by the trial court. The Applicant's passports shall be kept in custody of the trial court until final determination of the case.

Further, since the Applicant is a foreigner, the trial must be heard and concluded on a priority basis. This order be served on the trial court for compliance.

DATED and DELIVERED this 17th day of August, 2017.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Applicant present in person*

2. *Miss Aluda for the Respondent*