

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 265 OF 2017

RAJAB GAHWERRA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Bail/bond is a constitutional right of an accused. It should be granted unless there are compelling reasons not to. Once a court grants bail, it should not place conditions that are unreasonable or that an accused person cannot meet. Otherwise, it adds to one and the same thing; not granting bail.

The condition that was set by the trial court that the Ugandan High Commission should not issue a passport to the Applicant was not only unreasonable but impossible to meet. No reason was advanced that the Applicant was a flight risk or was likely to interfere with the trial. As such plain and clear terms of bond would have sufficed.

Accordingly, I set aside the order of the learned trial magistrate directed at the Ugandan High Commission not to issue the Applicant with a passport. I substitute it with an order that the Applicant shall be released only upon execution of a bond of Kshs. 50,000/= with one surety of a similar amount. The surety shall be assessed by the trial court. Surety should be Kenyan. He may, in the alternative pay a cash bail of Kshs. 50,000/=.

Dated and Delivered at Nairobi this 18th day of October, 2017

G.W. NGENYE-MACHARIA

JUDGE