

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.130 OF 2016

OLUSEYE OLEDAJI SHITTU..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Oluseye Oledaji Shittu is facing a charge brought against him under **Section 30** of the **Prevention of Terrorism Act**. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. His application to be released on bail pending trial was denied by the trial court. The Applicant has now made an application to this court seeking to be released on bail pending trial. In the affidavit in support of the application, he states that he was a person of ill health who was suffering from peptic ulcers and diabetes mellitus. He explained that he cannot obtain satisfactory treatment of his medical condition while in remand custody. He urged the court to take into consideration that, although he is a Nigerian National, he was married to a Kenyan and has been conducting business in Kenya, Uganda and Rwanda. In his submission before court, the Applicant stated that he was initially arrested on the claim that he was engaged in international credit card fraudulent activities. The charge was later changed to the one that he is currently facing under the **Prevention of Terrorism Act**. He denied that he was a terrorist or had any engagement with terrorism organizations including the Al- Shabaab. He was emphatic that he was not arrested with any explosive materials to justify his continued detention in custody while awaiting trial.

Ms. Kule for the State opposed the application. She stated that the charge the Applicant was facing was of a serious nature that if the Applicant was released on bail pending trial, the likelihood that he would abscond was very high. She stated that the Applicant was found in possession of assorted coloured credit cards which points to the fact that the Applicant may have been engaging in international credit card fraud. Investigations were being conducted and had not been concluded. Secondly, the Applicant was found in possession of assorted materials, including photographs of Al-Shabaab flags and videos of Al-Shabaab spokespersons' encouraging people to attack the Kenya Defence Forces. Learned counsel submitted that being a foreigner, the chances that the Applicant would abscond from the jurisdiction of this court was very high especially taking into consideration that the Applicant is likely to face a long time in prison if he is convicted. She emphasized that there was no evidence that the Applicant has a fixed abode in Kenya or that he was lawfully resident in Kenya. For the above reasons, she urged the court to disallow the application and order that the Applicant remains in remand custody pending the hearing and conclusion of the trial facing him.

The issue for determination by this court is whether the Applicant establishes a case for this court to release him on bail pending trial. This court shall be guided by **Articles 49(1)(h)** of the **Constitution** in determining whether the prosecution established compelling reasons to deny the Applicant his constitutional right to be released on bail pending trial. This court shall further be guided by the **Bail and Bond Policy Guidelines** published by the **National Council of Administration of Justice**. The **Bail and Bond Policy Guidelines** recognizes as a matter of principle and constitutional imperative, that an accused person should be released on bond pending trial unless there are compelling reasons. What constitutes compelling reasons must be established by the prosecution. The **Bail and Bond Policy Guidelines** acknowledges that every accused person is presumed innocent until proven guilty by a court of law and further that every accused person is entitled to his constitutional right to liberty unless there are legitimate

reasons for that right to be curtailed. Some of the considerations that the court is required to take into account in determining whether or not to release an accused on bail pending trial are: whether the accused is likely to abscond from attending trial; whether the accused is likely to commit or abet the commission of a serious offence; whether the accused is likely to endanger safety of the victims, individuals or the public; whether the accused is likely to interfere with witnesses or tamper with evidence; whether the accused is likely to endanger national security or the public interest. The above considerations are not exhaustive. Each case will be determined on its on circumstances and merits.

In the present application, the prosecution has forcefully argued that since the Applicant is facing a serious charge, and further being a foreigner, and a person of no fixed abode in Kenya, he was likely to abscond. On his part, the Applicant argue that he was entitled to be released on bail pending trial as the prosecution had not established compelling reasons to deny him bail pending trial. The Applicant emphasized that the law presumed him innocent until proven guilty by a duly constituted court of law. This court has carefully considered rival submission made by the parties to this application in that regard. It is clear to this court that the Applicant is facing a charge which potentially would lead him to serve a long time in prison if convicted. The court has also taken into consideration the fact that the Applicant is a foreigner and has tenuous links in Kenya.

Although the Applicant claimed that he was married to a Kenyan (and indeed produced a photocopy of an identity card of one Jane Wanjiru Oluseye Oladenji), the Applicant was not able to present to court an affidavit sworn by the said woman to support his claim that she was married to him. The Applicant explained that he was estranged with the said wife and as a result of which the said wife was in possession of all his properties in Kenya. This court found it hard to believe the assertion made by the Applicant. If indeed he owned property in Kenya, nothing prevented him from producing title documents or agreements for the purchase of the said properties in support of his claim that he has a fixed abode in Kenya. Further, this court took judicial notice of the fact that acts of terrorism have wreaked havoc in Kenya in the recent past. The court cannot overlook the fact that the Applicant has been charged with an offence under the **Prevention of Terrorism Act**. Whereas the law presumes the Applicant to be innocent until proven guilty in a court of law, this court cannot ignore the fact that persons charged under the **Prevention of Terrorism Act** may potentially cause harm to the people of Kenya if released on bail pending trial if the court cannot be sure that such an accused person will attend court when required to do so.

In the circumstance of this application, it was clear to the court that the Applicant may be tempted to abscond if he is released on bail pending trial. This is because, apart from being a foreigner, he has no roots in Kenya nor has he offered a Kenyan national to stand surety. In the premises therefore, this court holds that the prosecution established the existence of compelling reasons to deny the Applicant bail pending trial. The Applicant shall remain in remand custody pending the hearing and conclusion of the charge facing him. It is so ordered.

DATED AT NAIROBI THIS 16TH DAY OF JUNE 2016

L. KIMARU

JUDGE