



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC CRIMINAL APPLICATION NO. 118 OF 2014

TWAYBA HASHIM MTANDI.....1ST APPLICANT

TINA MARTIN KWAY2ND APPLICANT

OMARY SEID SELEMANI3RD APPLICANT

REHEMA RAMADHAN RASHID DEGE4TH APPLICANT

VERSUS

REPUBLIC RESPONDENT

(From original In Ruling Criminal Case Number 1029 of 2014 in the Chief magistrate’s court at Kibera before L.L.O. ONYINA (SPM) on 2nd April, 2014)

RULING

The applicants have been charged with offences of trafficking in narcotic drugs contrary to Section 4 (a) of The Narcotic and Psychotropic Substances Control Act No. 4 of 1994. They were arrested on 13th March, 2014 at Jomo Kenyatta International Airport Nairobi, and the particulars of the charges are that jointly with others not before the court they unlawfully trafficked by conveying a narcotic drug namely heroin of various weights and values.

They were all arraigned in court on 14th March, 2014 and each one of them denied the offence. Their application for bail was denied by the learned trial magistrate in a ruling delivered on 2nd April, 2014. This is not an appeal from the said ruling but a fresh bid to have the applicants released on bail.

In this application they have invoked the provisions of Article 49 (1)(h) alongside Articles 20, 21,22,23,24,25,27,28,and 29 of the Constitution of Kenya. The application is supported by an affidavit sworn by one Twayba Hashim Mtandi who is the first applicant herein on behalf of the other applicants. The application is opposed by the Republic. Both the learned counsel for the applicants and the Republic have filed written submissions and cited some authorities. I have read all the material before me including the cited cases.

It is true that Article 49 (1) (h) of the Constitution provides that an arrested person has the right to be released on bond on reasonable conditions pending trial unless there are compelling reasons not to be released. I am also alive to the presumption of innocence of any person arraigned before the court until proven guilty.

The basic consideration in applications of this nature is whether or not the applicants shall avail

themselves before the court to take their trial. There is no standard approach and each case must of necessity be based on its merits. Several factors come into consideration which include the seriousness of the offence, the nature and severity of sentence that may be imposed if the applicant is convicted and whether or not the applicant is a flight risk.

All the applicants are Tanzanian nationals. There is no evidence that they have any fixed abode in Kenya. Indeed, from the charge sheet and what I can gather from the material before me, they were arrested at Jomo Kenyatta International Airport transit lounges preparing to board a flight to Bangkok and later to Hong kong. No evidence has been displayed that they had any resident passes or authority allowing them to be present in Kenya.

The offences they are facing are serious and attract heavy penalties both financially and imprisonment. That consideration alone will make the temptation to escape trial overwhelming. In that case if the applicants were to be released they are a flight risk. A combination of all these considerations constitute compelling reasons to deny them bail. Accordingly the applications for bail by all the applicants are declined. They shall remain in remand until their trial is finalized.

I take judicial notice of the fact that criminal trials take quite some time before they are finalized. However, a policy is taking shape where if an accused person is denied bail the trial is fast tracked. This is the order that commends itself in the instant case.

Orders accordingly.

SIGNED DATED and DELIVERED in court this **21st day** of May **2014**.

A.MBOGHOLI MSAGHA

JUDGE