



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO.21 OF 2017**

**ANDREW YOUNG OTIENO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Andrew Young Otieno is facing, among other charges, two counts of **robbery with violence** contrary to **Section 296(2)** of the **Penal Code**. He has been charged in **Nairobi CMC Criminal Case No.1280 of 2014 Republic –Vs- Nelson Topicho Mulati & 3 Others**. The Applicant pleaded not guilty to the charge. He applied and was released on bond of Kshs.5 million with one surety of the same amount or a cash bail of Kshs.2 million. The Applicant states that he has been unable to raise the cash bail or the bond due to his humble background. He pleads with the court to reduce the bond terms that was imposed on him. He promises to abide by any new and reasonable terms that the court may grant to secure his release on bail pending trial. In the affidavit in support of the application, he deponed that he was ailing and suffering from a chronic condition which can only be properly managed if he is released on bail. The Applicant did not however annex any medical documents to the affidavit to support of his assertion that he was ailing. The Applicant did not state what chronic disease he was suffering from.

During the hearing of the application, Mr. Angaya, learned counsel for the Applicant amplified the grounds put forward by the Applicant in his application. He submitted that bail is meant to secure the attendance of an accused person before the trial court and not to punish him. He explained that the Applicant's co-accused have been released on bail on reduced bail terms. He urged the court not to punish the Applicant on account of his humble background. He stated that the court should take into account the Applicant's financial situation and impose reasonable bail terms that will secure his release on bail pending trial. Ms. Sigei for the State opposed the application. She submitted that the Applicant was charged with a serious offence where firearms were used in the commission of the crime. She urged the court not to interfere with the stringent conditions that were imposed by the trial court, taking into consideration the charges that the Applicant is facing. She submitted that the Applicant had not provided any medical evidence to support his claim that he was ailing. In the premises therefore, she urged the court to dismiss the application.

This court has carefully considered the rival submission made by counsel for the Applicant and on behalf of the State. **Article 49(1)(h)** of the **Constitution** guarantees any accused person the right to be released on bail pending trial unless there are compelling reasons. In the present application, the trial court has released the Applicant on bail pending trial. However, the Applicant is still in remand custody because he was not able to raise the bond that was required by the court to enable his release. The Applicant has been in remand custody for more than two (2) years. He has applied to be released on bail on reasonable terms. In essence, the Applicant is saying that by imposing stringent bond terms, the trial court in effect denied him his constitutional right to be released on bail pending trial. In that regard, the Applicant urged this court to follow the decision in **Nelson Opido Mulati –Vs- Republic [2016] eKLR** where Ngenye-Macharia J released the Applicant's co-accused in the lower court on reduced bond terms of Kshs.2 million with one surety of the same amount or cash bail of Kshs.1 million. The Applicant submitted that the court should take into account the Applicant's financial situation. The Applicant proposes that he be released on bond of Kshs.500,000/- or cash bail of Kshs.100,000/-. The State is opposed to the reduction of bond terms as proposed by the Applicant. It is the State's position that taking into consideration the

serious nature of the offences that the Applicant is facing, the bond terms imposed by the trial magistrate was reasonable in the circumstances.

This court agrees with the Applicant that the purpose of imposing bond terms is to secure the attendance of the accused before the court during trial. The terms imposed by the trial court should not be such that it amounts to denial of the constitutional right of the accused to be released on bail pending trial. The trial court must consider the circumstances of each accused when determining the bond terms to be imposed. In the present application, it was clear to this court that the Applicant was unable to raise the bond terms imposed by the trial magistrate. He has been in remand custody for a period of over two years. In the premises therefore, this court will order a reduction of the bond terms of the Applicant. He is hereby ordered released on bond of Kshs.1 million with one surety of the same amount or cash bail of Kshs.200,000/-. The trial magistrate's court file is ordered returned to the Chief Magistrate's Court Nairobi. It is so ordered.

**DATED AT NAIROBI THIS 1<sup>ST</sup> DAY OF MARCH 2017**

**L. KIMARU**

**JUDGE**