

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.180 OF 2017

BRADLY JUMA..... 1ST APPLICANT

PETER OKOTH ODONGO..... 2ND APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

The Applicants, Bradly Juma and Peter Okoth Odongo are facing a charge of **trafficking in narcotic drugs** contrary to **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances Control Act**. The 2nd Applicant has further been charged with two counts of contravening the provisions of the **Firearm Act**. When the Applicants were arraigned before the trial magistrate's court, they pleaded not guilty to the charges. They applied to be released on bond pending trial. After considering the application, the trial magistrate granted the 1st Applicant bail on condition that he posts a bond of Kshs.6 million with three sureties of the same amount. The 2nd Applicant was denied bond. The Applicants were aggrieved by this decision. They have applied to this court to have that decision revised. The 1st Applicant is of the view that the bond terms imposed by the trial magistrate was onerous as to amount to denial of bail. As for the 2nd Applicant, he was of the opinion that the prosecution had placed no compelling reasons before the trial court for that court to deny him bail. The investigating officer IP Ruth Mwangangi relied on the affidavit that she had sworn before the trial court to urge this court to uphold the decision of the trial magistrate.

During the hearing of the application, this court heard oral rival submission made by Mr. Bosire for the 1st Applicant, Mr. Enonda for the 2nd Applicant and by Ms. Nyauncho for the State. This court has carefully considered the said submission. It has also read the authorities that were cited by the parties in support of their respective positions. The issue for determination by this court is whether the Applicants establish a case for this court to release them on bond pending trial. The counsel for the Applicants cited the **Bail and Bond Policy Guidelines** published by the **National Council of Administration of Justice** in support of their respective arguments. The **Bail and Bond Policy Guidelines** recognize as a matter of principle and constitutional imperative, that an accused person should be released on bail 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 this application, there is no doubt that the Applicants are facing a serious charge which may result in

their incarceration for a long time if they are convicted. The prosecution's fear that the Applicants will likely abscond if they are released on bond pending trial or if stiff bond terms are not imposed is not misplaced. It has further been argued that the 2nd Applicant is likely to interfere with witnesses taking into consideration that he resisted arrest when the police went to arrest him. He used a pistol to threaten police officers who had gone to arrest him. That pistol has been confiscated and is subject to some of the charges facing the 2nd Applicant. As stated earlier in this Ruling, the primary consideration that this court must take into account in determining whether or not to release the Applicants on bond pending trial is whether they will attend court during trial. This court is not persuaded that the prosecution placed any evidence before this court that the Applicants may not attend court during trial.

In the premises therefore, this court finds merit with the Applicants application as a result of which both Applicants shall be released on bail pending trial on the following conditions:

I) The 1st Applicant, Bradly Juma is hereby released on bail pending trial upon posting a bond of Kshs.1 million with one surety of the same amount.

II) The 2nd Applicant, Peter Okoth Odongo is hereby released on bail pending trial upon posting a bond of Kshs.2 million with two sureties of the same amount.

It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF JULY 2017

L. KIMARU

JUDGE