



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 136 OF 2016

CHUKWUEMEKA JOHN.....1ST APPLICANT

FAITH GLADYS NINI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

Both Applicants are facing criminal trial in the Chief Magistrate's court at Nairobi. They are jointly charged with trafficking in a narcotic drug contrary to Section 4 (a) of the Narcotic Drugs and Psychotropic Substances (Control) Act no. 4 of 1994. The particulars of the offence being that on the 29th April, 2015 at City Square Post Office in Nairobi within Nairobi County jointly with others not before court trafficked in a narcotic drug namely heroin to wit 569.3 grams with a market value of Kshs. 1,707,900/ concealed in false bottom of a carton in contravention of the said Act. They pleaded not guilty. In the respect of the 1st Applicant bond pending trial was denied. As for the 2nd Applicant she was released on a bond of KShs. 2,000,000/- with two sureties of a similar amount.

The application before this court by Notice of Motion dated 26th June, 2016 is for request that the 1st Applicant be admitted to bail/bond and the 2nd Applicant's bond be reduced.

Learned counsel for the Applicant Mr. Odhiambo submitted that although the 1st Applicant was a Nigerian National, the learned Magistrate ought to have granted stringent bond terms as opposed to denying him bond all together. He submitted that although at the time of his arrest his visa was about to expire the same has since expired due to his incarceration. In the respect of the 2nd Applicant Mr. Odhiambo submitted that although the bond terms were reasonable the 2nd Applicant could not afford them as she comes from a poor background. Further Mr. Odhiambo requested the court to order for the release of the 1st Applicant's two mobile phones and ATM cards from the police.

Learned State Counsel Miss. Nyauncho for Respondent opposed the application in respect of the 1st Applicant. She submitted that since his visa had expired, his release on bond would result to his being in the country illegally. In any event, he had no fixed abode as a result of which he was a flight risk. In respect of the property allegedly held by the police, Miss Nyauncho submitted that she was not in a position to ascertain that the same were so held by the police. She was however not opposed to a slight reduction of the 2nd Applicant's bond terms as she was a Kenyan national and did not pose any flight

risk.

I have accordingly considered the submission made by the respective parties. One of the factors on why bond pending trial may be declined is on account of the Applicant being a flight risk. It is not in doubt that the 1st Applicant no longer holds a varied Visa warranting him to be in the country legally. Furthermore, it has not been demonstrated the reason for which he came into the country. Ultimately therefore, if he were released on bond he would not have a fixed abode which, of its self, renders him a flight risk. I do not think in the circumstances bond would be warranted. As for his personal belongings he ought to make the application for their release before the trial magistrate. The trial Magistrate can then conduct an enquiry from the investigation officer on whether or not the police are holding the said documents and make appropriate orders.

With respect to the 2nd Applicant, the prosecution has not demonstrated that she is a flight risk. It must be borne in mind that bond granted must always be commensurate with the offence charged. Whereas the offence charged is serious the amount of the drug involved may not warrant a two million bond. It is my view then that the bond granted to her was high and excessive.

In the result, the application in respect of the 1st Applicant is dismissed. As for the 2nd Applicant I admit her to a bond of Kshs. 1,000,000/= with one surety of similar amount to be assessed by the trial court. It is so ordered.

DATED AND DELIVERED AT NAIROBI ON 7TH SEPTEMBER, 2016

G. W. NGENYE-MACHARIA

JUDGE

In the presence of :

- 1. Both Applicants in person*
- 2. Miss Atina for the Respondent*



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