



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 9 OF 2017

EVERLYNE MARTHA MAPICHO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before this court is the accused's Chamber Summons Application dated 3rd May, 2017. She seeks orders that she be released on reasonable bail/bond upon terms and conditions as the court may deem just and expedient to impose pending the hearing and determination of this case. The application is supported by her affidavit and grounds listed on the body of the application thereof.

2. The grounds therein are that she is a casual labourer at Bungoma County and her parents who are peasant farmers solely rely on her for subsistence. That therefore her remaining in custody curtails her freedom considering that her trial is yet to commence and that she is innocent until proven guilty. The accused has made an undertaking to avail herself in court whenever required. She further stated that she is not in a position to interfere with the prosecution witnesses.

3. In response thereto, Corporal Abdi Ali who is the investigating officer in this case swore a replying affidavit filed on 25th May, 2017. He contended that in the event of conviction in this matter, the accused shall be faced with a death penalty which is on its own an incentive to abscond. He further contended that the prosecution witnesses are people well known to the accused and she is likely to interfere with them.

4. I have given due consideration to this application. Article 49 (1) (h) of the Constitution, which provision for right to bail provides:

“An arrested person has the right-

h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.” (Emphasis mine).

5. It is however noteworthy that the term 'compelling reasons' has not been defined or rather its attributes have not been given. What amounts to compelling reasons therefore is a thing for the court to determine depending on the grounds tendered in opposition, the nature and seriousness of the offence, facts and circumstances of the case.

6. Under the Constitution of Kenya, all offences are bailable unless compelling reasons are proved. The complainant has merely stated that the accused is likely to interfere with the witnesses and or abscond considering that the conviction for the offence she is facing is punishable by death. At this point it is

noted that a good number of court decisions have in deciding whether or not to grant bail have primarily put into consideration whether or not the accused will voluntarily attend trial without absconding. In this case, the complainant has not demonstrated that the accused will abscond, the allegations are rather based on presumptions. In the circumstances and bearing in mind accused's fundamental rights to freedom enshrined in the Constitution, I am inclined to allow this application. I accordingly order that:

a. The accused be released on a bond of Kshs. 500,000/- plus one surety of a similar amount.

b. The surety shall be approved by the Deputy Registrar of this court.

c. That the accused must attend mention before the Deputy Registrar at least once per month during the pendency of this case or when required by this court and must attend all the hearings of this case unless such attendance is dispensed with by this court.

It is so ordered.

Dated, Signed and Delivered at Machakos this 18th day of December, 2017.

D.K.KEMEI

JUDGE

In the presence of:-

Nangwere for Kituku - for the applicant

Machogu - for the Respondent

Kituva - Court Assistant