



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO. 295 OF 2016**

**JOAN WANJIKU MUNGAI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

By Notice of Motion dated 4<sup>th</sup> August, 2016, the Applicant herein prays to be released on bail in Kibera Cr. Case No. 4103 of 2009. She faces various counts of obtaining money by false pretences. She was initially released on bail which was cancelled on ground that she had absconded the trial. Her case was that at the time the bond was cancelled, she was held at the Lang'ata Women Prison for another matter. On other occasions when she failed to attend court, she sent her lawyer to inform the court of any predicament she was going through. At present, she alludes to ill health which has deteriorated due to incarceration. She urged the court to consider the fact that she had not contributed to delay of the trial.

Learned State Counsel on the other hand opposed the application. She submitted that the record of proceedings clearly indicated that the applicant had absconded for an entire one year until she was arrested for another offence. Warrants of arrest were issued severally and at the time she was brought to court, it was on account of another offence she committed when she absconded in this matter. In any case, since she was presented to court on 25<sup>th</sup> November, 2015, the medical records she presented to court were dated October, 2012. That was an indication that she could not account for the rest of the period since 2011 when she had not attended court. Furthermore, there were only two (2) witnesses remaining who could be availed within the shortest time possible. In that regard, Ms. Nyauncho pleaded with the court to decline the application and direct that the trial be heard on a priority basis.

The trial court proceedings show that to a large extent, the applicant has contributed to the delay of the disposal of the trial. Since only two witnesses are remaining, my view is that the trial should be concluded within the shortest time possible. I am disinclined to grant bail given that although when the applicant appeared in court after production from the Lang'ata Women Prison, before her arrest, she had not presented herself to the court for the period she was not sick. The medical record she presented in court showed that her illness did not persist for the entire period she was absent.

I hold, in the circumstances, that the applicant still remains a flight risk. Furthermore, her antecedent having absconded trial without justifiable reasons do not warrant her to be admitted to bail. The upshot of my observation is that the application is dismissed with an order that the trial be conducted on a priority basis. The lower court file shall be remitted back to the trial court and the same be mentioned on 7<sup>th</sup> November, 2016 before the trial magistrate for purposes of fixing a hearing date. It is so ordered.

**DATED and DELIVERED this 31<sup>st</sup> day of October, 2016.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. *Applicantin person.*

2. *Ms. Atina for the Respondent.*