

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 21 OF 2015

NAOMI MUTHONI MWAURA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Naomi Muthoni Mwaura, the applicant, has moved this court through her counsel Mr. Kamande seeking to be admitted to bail pending the hearing and determination of this case. The application was brought by way of Notice of Motion filed under certificate of urgency. The application is dated 13th February 2015. It is brought under Articles 49 (1) (h) and 50 (2) (a) and (e) of the Constitution of Kenya 2010, Sections 123 of the Criminal Procedure Code (Chapter 75 of Laws of Kenya as read with Section 7(1) of the Sixth Schedule to the Constitution of Kenya and all enabling provisions of the law.

The grounds in support of the application are found on the face of the application and on the supporting affidavit sworn by the applicant on 13th February 2015.

This court has been told that the applicant enjoys constitutional rights to bail pending the trial of this case; that she enjoys right to be presumed innocent until proof to the contrary is presented; that she is a young mother of a 10 month old baby who requires adequate care and protection; that there are no compelling reasons why bail should not be granted and that the applicant is willing to abide by all the conditions set by this court.

In her affidavit which was highlighted by Mr. Kamande, the applicant deposes that she is innocent and is determined to prove that innocence therefore she has no intention of fleeing from this court's jurisdiction; that she has no previous criminal record; that she has a permanent residence in Kangema Murang'a where she lives with her husband and child; that she works with the Ministry of Public Health and Sanitation as a Community Health Extension Worker at Kangema and that her continued incarceration may lead to her losing the job.

She has further deposed that she is a devoted Christian and that her father is an Archdeacon in Makuyu Archdeaconry in the Diocese of Murang'a; that she is alive to the consequences of non-attendance to court; that she is willing to comply with all the conditions set by the court and that there are no compelling reasons why she should be granted bail. She has attached documents to prove her marriage to one Elias Mwaniki Muigai, birth certificate of their child and her employment papers.

In his submissions to court, Mr. Kamande emphasized that the paramount consideration in a bail application is whether the accused will attend court when required to do so until the case is heard and determined. He cited various authorities including **Watoro v. Republic [1991] eKLR** and **Mohamed Mohamud Abdi & 4 Others [2012] eKLR** among others to emphasize that point.

The application was opposed by the Respondent represented by Ms Macharia. The Respondent relied on the replying affidavit sworn by CPL Moses Ouma on 3rd March 2015. CPL Ouma deposes that he is one of the investigating officers in this case; that there is sufficient evidence to connect the applicant with this offence; that the applicant knows key prosecution witnesses and there is fear that she may interfere with them. Ms Macharia urged the court to decline the application.

I have carefully considered the application and the attached documents as well as the cited authorities. Bail is a constitutional right that should not be denied without prove of compelling reasons. The applicant has submitted various documents as proof that she has a fixed abode, is employed, married and is a young mother to a 10 month old baby.

I have considered that the paramount consideration in any bail application is whether the accused will attend court when so required to answer to the charges he/she is facing. I have also considered that the right to bail is not absolute but can be denied where compelling reasons exist. The Respondent in opposing bail has the onus of proving there are compelling reasons to justify denial of bail. Therefore it is not enough to claim that the applicant may interfere with witnesses without proof of that claim. It is expected that some proof, for instance an affidavit by the Investigating Officer or the witness, should be presented to court as proof of that fact. In my view apprehension that the accused may interfere with witnesses is not enough.

I am afraid this court has not been persuaded that the accused will interfere with witnesses. It is not in her best interests to do so in my view. This court in granting bail sets certain conditions to be met by an applicant failure to which action adverse to the applicant may be taken. I will and do hereby allow this application and pending the hearing and determination of this case. The applicant shall post a bond of one million Kenya shillings (Kshs 1,000,000) with one surety of similar amount. She is cautioned against doing anything that may interfere with the course of this trial by either contacting any prosecution witnesses or threatening them in any manner whether by herself or her relatives or friends. She will attend court whenever required to do so until this case is concluded. Any failure on her part to attend court without what this court may consider as a valid reason will automatically lead to cancellation of bond and her being remanded in custody pending the conclusion of the case. It is so ordered.

Dated, signed and delivered this 16th day of March 2015.

S. N. MUTUKU

JUDGE