

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.169 OF 2014

MARY KINYA RUKWARU....

.....APPLICANT

VERSUS

RAGHUNATHAN SANTOSH.....1ST

RESPONDENT

REPUBLIC.....2NDRESPONDENT

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RULING

The 1st Respondent, Raghunathan Santosh is facing three (3) counts of causing death by **dangerous driving** contrary to **Section 46** of the **Traffic Act**. The trial is yet to commence. Pending the hearing of the case, the trial court released the 1st Respondent on cash bail of Kshs.300,000/-. The 1st Respondent paid the cash bail. Mary Kinya Rukwaru (the Applicant) the widow of one of the deceased persons who died in the traffic accident that led to the charge, was aggrieved by the decision of the court to release the 1st Respondent on what she considers to be lenient bond terms. In particular, she was aggrieved that the 1st Respondent, being a foreigner, was likely to abscond from the jurisdiction of the court if the court did not impose an additional condition to his bail requiring him to deposit his passport in court pending the hearing and determination of the traffic case. The Applicant was apprehensive that if the court did not confine the 1st Respondent within the jurisdiction of this court, she would be unable to get justice for the deceased persons who died as result of the traffic accident.

The application is opposed. The 1st Respondent challenged the *locus standi* of the Applicant to bring the application before this court. The 1st Respondent was of the view that the application, if granted, would be contrary to **Articles 27, 39, 47, 49 and 50** of the **Constitution**. In his replying affidavit, the 1st Respondent explained that he works for a multi-national company which requires him to constantly travel within the African and the Middle East Regions. He annexed a copy of his passport which indicated that since being charged in court, he had travelled in and out of the country. He deponed that he had no intention of absconding from the jurisdiction of this court and categorically stated that he will attend court sessions on the dates that the case shall be scheduled for hearing. He was of the view that to require him to deposit his passport would curtail his freedom of movement without any justification. He urged the court to dismiss the application.

This court has considered the written submission filed by the parties to this application. It has also considered the oral rival submission made in court by Ms. Mungai for the Applicant, Ms. Ng'etich for the State and by Mr. Njeru for the 1st Respondent. The issues for determination by this court are essentially two: firstly, whether the Applicant has *locus standi* to bring the present application before this court and secondly, whether the Applicant made a case for this court to interfere with the discretion of the trial court to release the 1st Respondent on bail pending trial. As regard the first issue of *locus standi*, **Article 50(7)** of the **Constitution** grants the court powers to allow communication to be made by a complainant through an intermediary. What constitutes "**communication**" has not been defined by the **Constitution**. The **Victim Protection Act 2014**, however, grants complainants in criminal cases to have audience

before the trial court to make representations during the cause of the trial. The audience is however circumscribed by **Section 9(2)** of the **Act** which requires first, the victim (complainant) to establish a personal interest in the subject of intervention. In the present application therefore, this court is not prepared to rule that the Applicant has no *locus standi* to make the present application before this court because the **Constitution** allows her to communicate to this court. She has therefore *locus standi* to make the application. On the second issue, the Applicant stands on a slippery ground. She is in effect challenging the discretion of the trial court to grant bail to the 1st Respondent. The Applicant is of the view that the bail terms given to the 1st Respondent were lenient. She stated that the 1st Respondent was likely to abscond from the jurisdiction of the court. On his part, the 1st Respondent explained that he works for a multi-national company which requires him to travel in and out of the country. He had not given the trial court any reason to be apprehensive that he will not attend court during trial. The Applicant appears to be concerned specifically with the fact that the trial court did not require the 1st Respondent to deposit his passport in court pending the hearing and conclusion of the traffic case.

Having evaluated the facts of this application, it was clear to the court that the Applicant has no basis to doubt that the 1st Respondent will attend court during trial. The trial court was convinced, as this court also is convinced, that the 1st Respondent will not likely abscond from the jurisdiction of the court because since taking plea, he has travelled out of the country on several occasions but has eventually returned to the country. He has not missed to attend court on the date the case has been fixed for trial. It appeared to the court that the Applicant was more intent on ensuring that the 1st Respondent is present in the country when she will in due course mount the civil case seeking damages on behalf of the deceased persons against the 1st Respondent. This court is of the view that the fact that there is a pending traffic case before the subordinate court, does not prevent the Applicant from filing civil cases against the 1st Respondent on behalf of the estates of the deceased persons. The Applicant is not saying that the motor vehicle that was being driven by the 1st Respondent was uninsured. If it was insured, as most likely is the case, then, the Applicant's claim against the 1st Respondent, if at all, will be settled by the 1st Respondent's insurers. There is therefore no nexus between the 1st Respondent's attendance in court in the traffic case and the civil case that is intended to be filed.

From the foregoing, it is clear that the application lacks merit and hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF NOVEMBER 2014

L. KIMARU

JUDGE