

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CRIMINAL DIVISION

MISCELLANEOUS APPLICATION NO. 212 OF 2011

JANE WAMBUI GAKUNGU.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

My provisional view of the matter is that the appeal filed by the Applicant against conviction and sentence has overwhelming chances of success. The Applicant was the 1st accused. Together with the 2nd accused, they were charged with conspiracy to kill under section 224 of the Penal Code whose particulars were that on diverse dates between April and November 2008 at City Centre in Nairobi they jointly conspired to kill Michael Muraguri Gakungu. Following trial, the 2nd accused was found not guilty and was acquitted. The trial court specifically found her (2nd accused) not to have been party to any conspiracy.

One cannot conspire alone. The particulars of the charge did not allege that the offence was committed by the two accused jointly with other people, known or unknown. Once the 2nd accused was acquitted it was incumbent upon the court to acquit the Applicant.

Mr. Kanyi made reference to **Archibold Criminal Pleading, Evidence And Practice 39th Edition at page 365** in which the writer at paragraph 615 states:-

“And if, upon an indictment for a conspiracy, the jury acquit all the defendants but one, they must acquit that one also, unless it is charged in the indictment, and proved, that he conspired with some other person not tried upon that indictment.”

I am mindful of the principles governing the grant of bail pending appeal as enunciated in various decisions, including **Mundia –Vs- Republic [1984] KLR 623**.

I admit the Applicant to bail. She will deposit cash bail of KShs. 50,000/= to await the hearing and determination of her appeal.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF APRIL 2011

A. O. MUCHELULE

JUDGE