



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL MISC. NO. 31 OF 2011**

**JOYCE WAIRIMU NJUGUNA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Joyce Wairimu Njuguna was charged with others in Nakuru CMCRC No. 659 of 2011, with an offence of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. By a Notice of Motion dated 4/3/2011, she prays that the court do release her on bond pending the trial. The application is premised on the following grounds; that she has been held at the Women GK Prison since 22/2/2011, when she was arrested; that the right to bail/bond is guaranteed under **Article 49(1)(h)** of the **Constitution**; that there are no compelling reasons to warrant her being denied bail and she is innocent until proved otherwise; that she is ready and willing to abide by any terms and conditions that the Honourable court will set. Further grounds are that her health has deteriorated when in remand; that from the prosecution statements issued to her, she is not adversely mentioned. Mrs Imali, Counsel for the applicant urged that the fact that the offence is serious does not mean the applicant be denied bond. She made reliance on the case of **R V. Daniel Musyoka Mwasya Cr. 42/09 MSA** and **HCR 123/2010, Nicholas Ngethe V. Rep.** Counsel further submitted that the applicant has a fixed abode in Nakuru where she carries on a taxi business and that she has two young children.

The application was opposed. A replying affidavit was filed by PC Joseph Komen, a Police Officer attached to the Flying Squad Unit Nakuru, deponed that there is overwhelming evidence against the appellant and that due to the nature of the offence, she is likely to abscond if released. Mr. Omutelema, learned Counsel for the State, submitted that evidence has already been adduced in the lower court to the effect that the applicant was arrested with the stolen goods soon after the robbery and that some evidence having been given incriminating the applicant, the proper forum for her to have made the application is the trial court.

I have now considered all the submissions made. Some of the criteria to be considered in such an application are:-

- 1. The seriousness of the offence;**
- 2. If the case is partly heard, the weight of the evidence adduced;**
- 3. Whether the applicant will interfere with the witnesses;**
- 4. The protection or safety of the applicant;**

## **5. Whether the applicant will turn up for trial.**

**Article 149(1)(h)** of the **Constitution** does guarantee the applicant's right to bail or bond. The only limitation is that the prosecution should demonstrate that there are compelling reasons to deny the applicant bond.

The most important criteria to consider is whether, if released on bond the applicant will turn up for her trial. From the submissions before the court, it was disclosed that some evidence has already been tendered in the lower court, which tends to incriminate the applicant i.e. that she was found in possession of the stolen goods, soon after the robbery. One of the considerations the court has to take into account is the weight of the evidence adduced if the case is partly heard. That being the case, it is only the trial court which can ascertain whether or not the evidence so far adduced is weighty enough to tempt the applicant to take flight.

The applicant deponed that she is a resident of Nakuru and carries on a taxi business. Nakuru County is vast and there is no evidence of her place of abode or that she has any fixed abode. There is also no evidence of the taxi business the applicant allegedly carries on e.g. a licence from the Council and the Log Book or registration number of her vehicle.

Counsel for the applicant urged that the applicant cannot just be denied bond because the offence is serious. One of the criteria to consider before bond is given, is the seriousness of the offence and the likely sentence which may tempt a person to abscond. That consideration cannot be wished away. It must be taken into account along with the other considerations.

Having considered all the above, that the offence the applicant faces carries a death sentence upon conviction; this matter is parheard in the trial court and it has been deponed that there is weighty evidence against the applicant; her place of abode has not been disclosed, I find that all these factors put together, the applicant is a flight risk. The cases cited before this court were murder cases. The circumstances in those cases are different. A case of robbery with violence involves careful planning and execution of the process unlike most murder cases.

For all the above reasons, I decline to grant the prayer for bail. The case before the trial court is already in progress and will be determined soon.

The applicant will remain in remand pending the hearing of her case.

**DATED and DELIVERED this 29<sup>th</sup> day of November, 2011.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Ogonda for the applicant.

Mr. Nyakundi for the State.

Kennedy – Court Clerk.