



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL MISC. NO. 71 OF 2011

JACINTA WANGECI KAGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Jacinta Wangeci Kago jointly, with others are charged with various offences before the Chief Magistrate's Court Nakuru. The offences include; Kidnapping with intent to confine contrary to **Section 259** of the **Penal Code**, Robbery with violence contrary to **Section 296(2)** of the **Penal Code** and being in possession of an imitation of a firearm contrary to **Section 21(1)** as read with **Section 21(2)** of the **Firearms Act Cap 114 Laws of Kenya**. By the Notice of Motion dated 4/7/2011, the applicant prays that this court do release her on bond or bail pending the finalization of the ongoing trial in NKU 2037/2011.

The grounds upon which the application is premised are that the applicant has been in custody since 9/6/2011; has a right to bail by virtue of **Article 49(1)(h)** of the **Constitution**; that the trial court declined to grant her bail, that she is innocent until proven guilty. The applicant deponed that she is a resident of Nakuru and will abide by all conditions that the court will impose; That the courts do grant bond in capital offences and she urged the court to exercise its discretion as did the courts in **Rep. V. Danson Mgunya & Kassim Sheebwana Mohammed CRC 26/08 (MBS)** and **Misc. CRC 86/2010, David Njuno Mbiyu V. Rep.** Mr. Oumo counsel for the appellant urged that the state had not shown any compelling reasons to withhold bond from the applicant.

The application was opposed and the Investigating Officer, PC John Wainaina swore an affidavit dated 25/7/2011. He deponed that before arrest the applicants and the co-accused threatened people and demanded a ransom to secure the release of the complainant and the Government had to marshal its security forces in order to apprehend the suspects; that the witnesses and complainant have been reassured of their security with the applicant and co-accused in custody and if released they would no longer feel secure.

Mr. Nyakundi, learned counsel for the State submitted that the applicant is a flight risk and that she is even likely to commit other offences considering the nature of the offences committed.

I have now considered the rival arguments. **Article 49(1)(h)** of the **Constitution** does guarantee the right to bond. It reads:-

“49(1)(h). Any arrested person has the right –

(a)....

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

The right to bond is therefore not absolute. All that the court has to consider is whether the prosecution can demonstrate that there are compelling reasons to deny the applicant bond. Some of the criteria that the courts have considered in granting bond are:-

- 1) The nature of the charge;**
- 2) The nature of the evidence which supports the charge;**
- 3) The gravity of the punishment in the event of conviction;**
- 4) Previous criminal record of the accused if any;**
- 5) The likelihood of the accused interfering with witnesses;**
- 6) The Safety and protection of accused.**

The most important consideration in the granting of bond is whether the applicant will turn up for trial. In this case the prosecution alleges that the applicant is a flight risk because of the seriousness of the offence. If convicted the applicant stands to be sentenced to death. She is charged with four serious offences. As submitted by Mr. Nyakundi, unlike the decisions in the cases of **Njuno** and **Mgunya** (supra), the accused were charged with the offence of murder, an offence committed at once or in a fit of anger. However, the offences allegedly committed by the applicant involved careful planning and execution and it took quite sometime in their execution. One of the charges is kidnapping and confinement where threats were issued so that ransom could be paid. In my view, the nature and circumstances under which the offences were committed makes this court slow to release the applicant on bail before the matter is heard and determined. Even the likelihood of interference with witnesses is high bearing in mind that phone calls were made for purposes of demanding ransom. The Investigating Officer also deponed that there were threats to witnesses and the complainant. In my view there is nothing to stop the said threats if the applicant were released on bond.

The applicant deponed that she is a resident of Nakuru. Nakuru County is vast. She did not state the exact place of residence or what she does for a living. It would be difficult to trace her if released on bail.

By the time this application was made no evidence had been taken by the trial court and the nature of the evidence to be adduced cannot be taken into account at this stage.

For the above reasons, I am satisfied that the applicant is a flight risk and this court therefore declines to grant the applicant bond. She will remain in remand during the trial. It is so ordered.

DATED and DELIVERED this 18th day of November, 2011.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Oumo for the applicant.

Mr. Nyakundi for the State.

Kennedy – Court Clerk.

