

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Criminal Appeal 148 of 2009

**NANCY WANJA
KITHAKA.....
.....
....APPELLANT**

VERSUS

**REPUBLIC.....
.....
.....
RESPONDENT**

R U L I N G

The appellant through Momanyi Gichuki & Co. Advocates has filed the notice of motion dated 9/10/2009 seeking to be released on bail pending appeal. There are 3 grounds on the face of the application; namely that the offence she had been charged with in the subordinate court was baileable; that she was on bail and didn't jump bail and further that has appeal has overwhelming chances of success.

I have considered these grounds along with her Supporting Affidavit dated 9/10/2009. I have also seen her grounds of appeal. I note that she is a single mother who has left her children on their own.

I have also appreciated the fact that the learned counsel has conceded the application. Having gone through the evidence before the trial court, I am satisfied that the said concession was in order. I agree that the appeal has good chances of success. The threatening words complained of are not even given in the charge sheet. The same were not extracted from the said mobile phones and there is effectively no exhibit in the court file to support that the said words were ever written and sent to the complainant. The words paraphrased by the complainant do not in my considered view even remotely amount to a threat to kill. For these reasons, I will allow the application and order that the applicant herein be released upon signing her own bond of 20,000/= to appear for mention before the Deputy Registrar a date the Deputy Registrar will assign.

W. KARANJA

JUDGE

12/11/2009