



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Criminal Appli 131 of 2007**

**JANE WANGECHI KARIUKI.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

Before me is a Chamber Summons dated 29<sup>th</sup> January, 2007 filed by the applicant **JANE WANGECHI KARIUKI**. The application is purported to be brought under Section 123(2)(3) of the Criminal Procedure Code (Cap. 75). It seeks for the following orders, that –

1. Bond/bail terms granted by the learned trial magistrate be verified (varied?) to a reasonable and affordable surety bond pending trial.
2. This honourable court be pleased to issue orders which (it) may deem fit to grant other than the lower court bail/bond terms.

The application is supported by the affidavit of the applicant sworn on 29<sup>th</sup> January 2007. It is deponed in the affidavit that the applicant was charged before the subordinate court with the offence of obtaining by false pretences contrary to section 313 of the Penal Code. It is also deponed that the court initially granted the applicant cash bail of Kshs.400,000/=, which was later on 27.1.2007 reduced to cash bail of Kshs.200,000/= when the applicant applied for surety bond. It is also deponed that the applicant is unable to raise cash bail of Kshs.200,000/= because her family was poor, and that relatives were only able to raise surety bond.

At the hearing of the application, the applicant submitted that she was asking the court to review the bond terms as she had school going children.

Learned State Counsel Mrs. Gakobo opposed the application. Counsel contended that the applicant had initially been granted cash bail of Kshs.400,000/=. She later asked for a variation, and the cash bail was reduced by the subordinate court to Kshs.200,000/=. It was counsels contention that in terms of section 123 of the Criminal Procedure Code bail or bond terms depended on the circumstances of the case but should not be excessive. Counsel contended that the applicant faced three counts. The first count was for making a passport without authority. The second count was for making a title deed without authority.

The third count was for obtaining Kshs.1.252 million by false pretences. It was counsel's contention that the alleged offences were serious and the cash bond terms given by the learned trial magistrate were in fact lenient, in view of count 3.

In a short response the applicant stated that she wanted to be given bond with a surety.

The applicant was granted cash bail by the learned trial magistrate. She has applied to this court for review of the terms of bond. The High Court has powers to review bond or bail terms given by the subordinate court under section 123(3) of the Criminal Procedure Code (Cap.75), which provides –

“123(3) the High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.”

I have perused the charges and the proceedings before the learned trial magistrate. Indeed the applicant was charged with three offences. The first charge is for making a passport without authority contrary to Section 357(a) of the Penal Code. The second count is for making a title deed without authority contrary to Section 357(a) of the Penal Code. The third count is for obtaining money by false pretences contrary to section 313 of the Penal Code. The third count is a misdemeanour whose maximum sentence is three years imprisonment. The first and second counts are felonies with a maximum sentence of seven years imprisonment each.

The learned trial magistrate granted the applicant cash bail of Kshs.400,000/= and later revised it to cash bail of Kshs.200,000/=. The applicant has now come to this court seeking for a review of the learned trial magistrate's terms of the cash bail. She wants to be granted bond with surety instead of cash bail.

The court has discretion in granting cash bail or bond terms for bailable offences. That discretion is defined under Section 72(5) of the constitution, which provides –

“72(5) If a person is arrested or detained as mentioned in sub-section (3)(b) is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is charged with an offence punishable by death, be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial”.

In my view, it follows from the above provisions of the law that the conditions, if any, for release on bail or bond, must be reasonably necessary to ensure the attendance of the accused at the trial or proceedings.

The applicant thinks that the cash bail terms imposed by the learned trial magistrate are too onerous. She wants to be granted bond with surety. Considering that the applicant has been charged with two felonies, each of whose maximum sentence is 7 years imprisonment, I do not consider the cash bail terms of Kshs.200,000/= to be onerous. However, in my view, the applicant should have been given an option for bond with surety. On that ground, I will review the bail terms granted by the learned trial magistrate and order as follows:-

1. The applicant will be released on cash bail of Kshs.200,000/= or alternatively on personal bond of Kshs.300,000/= with one surety of similar amount.
2. The applicant will deposit any passport that she might have with the trial court.

It is so ordered.

Dated and Delivered at Nairobi this 18<sup>th</sup> day of June, 2007.

**George Dulu**

**Judge**