



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Crim Appli 353 of 2006**

**MARY WAMBUI KINYANJUI.....**  
**.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

The Applicant **MARY WAMBUI KINYANJUI** in her chamber summons application dated 28<sup>th</sup> June 2006, seeks in pertinent as follows: -

***“1. THAT the applicant be admitted on bond in Criminal Case No. 876 of 2006.”***

The application was supported by an affidavit sworn by the applicants advocate **GEORGE O. OKACH**. In the affidavit at paragraph 4 the advocate depones that the applicant was denied bond in Chief Magistrate’s Court Criminal Case No. 876 of 2006 on the grounds that she had absconded in Criminal Case No. 2818 of 2004. At paragraph 5, 6 and 7 the deponent tries to explain why the applicant absconded in Criminal Case No. 2818 of 2004. The reason given for absconding was an alleged statement associated to the prosecutor of the court. The prosecutor’s name is not given and neither has he sworn an affidavit to confirm the information. That information therefore remains a bare statement that was unsubstantiated and therefore not admissible. Even if the alleged information from the prosecution were to be accepted as a statement of fact, it would still not suffice to justify a finding that it was a reasonable and plausible excuse for failing to attend court. The Applicant is said to have informed the deponent that the prosecutor told her that the matter would proceed no further since her co-accused had jumped bail. The Applicant was duty bound to comply with the terms of her bond in 2818/04. When the Applicant was released on bond, she entered into a recognizance that she will appear in court on the dates and the times required by the court. That duty could not be delegated and neither could she ignore those terms. The applicant acted deliberately by failing to attend court as required and she cannot be heard to say that another told her not to go to court. The court had not given such communication and neither would the Court do so through the prosecution. An accused person owes a duty to the court and not the court prosecutor and therefore it is only the court that could have discharged her if at all.

I see from the record of the proceedings in 2818/04 that the Applicant has not shown cause why her bond in that case should not be cancelled by the Court. Instead of going to show cause, the Applicant opted to come to this court to apply for bail in Criminal Case No. 876 of 2006. Supposing I granted her bond in the Case (876/06) what purpose would it serve? None because she has no bond in 2818/04.

I also see that the trial court declined to grant the Applicant bond in 876/06 on the basis that one, she

had absconded in 2818/04 and two that she had committed a fresh offence. The principle consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration the court must consider the following:-

1. The nature of the charge, seriousness of the punishment to be awarded if the accused person is convicted. The accused faces 7 years imprisonment if found guilty.
2. The character or antecedents of the accused.

In this case the fact that the Applicant had jumped bail in an earlier case is a relevant consideration and a good ground to deny bail.

3. Whether the accused may commit further offences. In this case, the Applicant has two cases for offences committed in 2004 and 2006. The accused has proved not the likelihood that she may commit other offences but that she indeed has committed a new offence since the previous one were she jumped bail.

An accused person's right to bail is not absolute. The accused person has responsibilities under those rights and an obligation to meet them. The applicant has failed once to meet her obligation under the bond terms granted to her in 2818/04. In the circumstances I find that the learned trial magistrate was justified to disallow bond in 876/06.

For the same reasons I find this application lacks in merit and dismiss it in its entirety.

Dated at Nairobi this 26<sup>th</sup> July 2006.

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**LESIIT, J.**

**JUDGE**

Ruling read and delivered in presence of:

Miss Kinyenje for Mr. Okach for Applicant

No appearance for State

Huka CC

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**LESIIT, J.**

**JUDGE**