



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Crim Appli 524 of 2006

JENNIFER ATIENO ODUOL.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

JENNIFER ATIENO ODUOL was on April 2006 arraigned before the Chief Magistrate’s Court Kibera with the offence of **TRAFFICKING IN NARCOTIC DRUGS** contrary to **Section 54(a)** of the **ANTI NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES (Control) Act No. 4 of 1994**. The Appellant pleaded not guilty to the charge and subsequently applied to be released on bail. The Application was turned down by the lower court on 24th April 2006. On 28th September 2006 the Applicant filed her Chamber Summons application through Kangahi & Associates Company under **Section 72(5)** of the Constitution and **Section 123(1) and (3)** of the **Criminal Procedure Code**. The Appellant seeks in pertinent: -

“1. That the Application be certified *urgent*.

2. The applicant be admitted to bail *pending hearing*”

Mr. Kangahi argued the application for the Applicant while **Miss Gateru** appeared for the State and opposed the application.

Mr. Kangahi submitted that the Applicant’s application to be released on bail was rejected by the trial court on the basis that the Applicant’s attendance for trial was not guaranteed. Counsel submitted that since then, the whole of the prosecution case has been heard and what remained were submissions and possibly defence. Counsel submitted that the hearing has been re-scheduled for 6th November 2006. Counsel submitted that bail was the Applicant’s Constitutional right, that the continued stay of the Applicant in custody awaiting finalization of the case was unreasonable and that the refusal to grant bail on grounds given was not sustainable. Counsel relied on **Misc. Appl. No. 254 of 2006**.

Miss Gateru for the State submitted that the major consideration in an application such as this one is whether an accused person will avail himself to stand trial. Counsel submitted that the case against the Appellant was serious and if convicted she faced a fine of 3 times the estimated value of drugs given at 41 million. That she also faced a possible life imprisonment. Counsel submitted that the Applicant was likely to abscond in fear of the punishment she was likely to face. Counsel further submitted that the Applicant had been tried within a reasonable time as indicated by the Applicant’s counsel’s submissions.

Miss Gateru distinguished **Misc. 254 of 2006** the case cited by the Applicant's advocate with the instant case. Counsel submitted that as opposed to the cited case where the State did not oppose the application for bail, in the instant case, the State was opposing bail. Counsel urged this court to dismiss the application.

It is true that the offence for which the Applicant was charged is bialable. It is also true that bail is a Constitutionally protected right. However, the right to bail is not absolute and the court has power to decline bail upon certain considerations. Counsel for the Applicant has deponed that bail was declined by the lower court on grounds that the Applicant was likely to abscond. Counsel annexed to his affidavit both the Affidavit filed by the prosecution giving reasons why bond should be denied and the actual ruling of the trial court.

I see from all these pleadings and proceedings that the learned trial magistrate has given proof why the risk of the Applicant to abscond was not a mere assertion but a real possibility. Not only have many persons charged with similar offences absconded. That in itself is not a very compelling reason because those who are demonstrated to have absconded are almost all foreigners. The fact that the offence carries a maximum sentence of life imprisonment and a possible fine of Kshs.122 million is a reasonable and compelling reason to decline bail. The gravity of a charge and the likely sentence upon conviction are factors to be taken into consideration and a good indicator of a predisposition of an accused person to abscond. For this reason alone, I would also decline bail.

I see that the trial has proceeded with speed and is almost concluded and the Applicant will therefore not suffer any prejudice if bail is declined at this stage.

The Application for bail is refused and dismissed.

Dated at Nairobi this 1st day of November 2006.

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Applicant

Mr. Kangahi for the Applicant

Miss Gateru for State

Tabitha CC

LESIIT, J.

JUDGE