



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**MISC. CRIMINAL APPLICATION NO. E012 OF 2020**

**BETWEEN**

**JOYCE WAIRIMU WANYOIKE .....APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

*(Being a Revision of the order of 7<sup>th</sup> September, 2020 made in Thika Chief Magistrate's Court*

*Criminal Case NO. 1465 of 2020)*

**RULING**

1. **JOYCE WAIRIMU WANYOIKE** (the applicant) has applied by Notice of Motion, an application dated 28<sup>th</sup> September, 2020, for revision of the trial court's order of 7<sup>th</sup> September, 2020. The trial court on that day release the applicant on bail set at Kshs.2 million cash bail. The applicant on 21<sup>st</sup> September, 2020 sought from the trial court revision of the bail terms on the ground that the applicant's family could only raise the amount of Kshs.800,000/= for the applicant's bail. The trial court declined to review those terms.
2. The applicant has approached this Court through her application for revision of those terms on the ground hat prosecution did not prove compelling reasons to deny her favourable terms and that the offence the applicant faces is bailable.
3. The key consideration when a court is confronted with an application for bail is to ensure an accused person shall attend the trial. This is what was stated in the case **REPUBLIC VS. ROBERT SIPPOR NZILU (2018) eKLR:-**

*“I associate myself with the view expressed by Muriithi, J in **KELLY KASES BUNJIKA VS. REPUBLIC** (supra) that:*

*“It is clear that the primary consideration for bail is whether the accused will attend his trial for the charges facing him, and it must, therefore, be a compelling reason if it is demonstrated that “the accused person is likely to fail to attend court proceedings”. The question in this matter becomes whether there is, on a balance of probabilities evidence that the accused is likely to abscond.”*

4. In Canadian case **R. V. COUTURE 2004** the court discussed the purpose of bail as:-

*“Considering bail applications with the public in mind can mean different things in different contexts. In some cases, it may require concern for further offences. In other cases, it may refer more particularly to public respect for the administration of justice. It is clear, however, that the denial of bail is not a means of punishment. Bail is distinct from the sentence imposed for the offence and it is necessary to recognize its different purpose which, in the context of this case, is largely to ensure that convicted persons will not serve sentences for convictions not properly entered against them.”[Underlining added.]*

The granting of bail by a court is an exercise of discretion. The High Court is provided with an avenue to reduce the terms of bail issued by the subordinate courts. See **Section 123(3)** of the Criminal Procedure Code which provides:-

*“.....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.” [Underlining mine]*

5. In my perusal of the proceedings before the trial court I find that the learned magistrate took into account that the applicant was a flight risk, having failed to attend her plea after being released from police custody on police bond. The applicant is facing four counts relating to forgery of title and of obtaining money by false pretence. The amount of money involved is Kshs.4.3 million.

6. The contention of the applicant is that the bail terms issued by the trial court are so high to amount to denial of bail. Terms of bail or bond should be reasonable as provided under **Article 49(1)(h)** of the Constitution. The court in setting those terms should bear in mind that the accused is presumed innocent until proved guilty.

7. The Director of Public Prosecutions did not oppose the application.

8. Bearing in mind what is stated above, I will accede to the applicant's application. I therefore grant the following orders:-

(a) The terms of bail of 7<sup>th</sup> September, 2020 in Thika Chief Magistrate's Criminal Case No. 1465 of 2020 are hereby reviewed and **Joyce Wairimu Wanyoike** is ordered to provide bond of Kshs.1,000,000 (one million) shillings and two sureties of similar amount.

(b) In the alternative **Joyce Wairimu Wanyoike** shall provide cash bail of Kshs.1,000,000 (one million) shillings with two sureties of similar amount.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 13TH DAY OF MAY, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant.....Ndege

Applicant: .....Mr. Gachie Mwanza

Respondent.....Mr. Kasyoka

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**