



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**MISC. CRIMINAL APPLICATION NO. E028 OF 2020**

**EVALINE MICERE WANJOHI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Being a Revision of the Ruling in SPM Court at Kikuyu, G. Onsarigo, SRM,

Criminal Case No. E195 of 2021 dated 9<sup>th</sup> March, 2021)

**RULING**

1. A ruling on bail application was delivered at the **Kikuyu Senior Principal Magistrate's Court** on 9<sup>th</sup> March, 2021 which **Evaline Micere Wanjohi (Evaline)** seeks this Court to Revise in exercise of the power under **Section 362** of the Criminal Procedure Code. Evaline is challenging the trial court's refusal to grant her bail.
2. Evaline has been charged before the Kikuyu court with the offence of entering a dwelling house with intent to commit a felony contrary to **Section 305** of the Penal Code on the 1<sup>st</sup> count and on the 2<sup>nd</sup> count with the offence of stealing in a dwelling house contrary to **Section 279(b)** as read with **Section 279(G)** of the Penal Code. She pleaded not guilty.
3. The trial court entertained an application filed by **Director of Public Prosecution (DPP)** dated 1st March, 2021. DPP, by that application sought that Evaline be denied bail.
4. In the affidavit dated 30<sup>th</sup> April, 2021 sworn by her advocate it is stated the trial court denied Evaline bail; that the prosecution failed to establish any compelling reason to deny Evaline bail; that bail was declined when there was no guarantee that the trial will be speedily concluded; that even though the offence Evaline faces is bailable the trial court presumed her "already guilty of the offence"; and that the trial court's ruling went against the provisions of the Constitution that all suspects are presumed innocent until proven guilty.
5. **Ms. Kathambi** Senior Principal Prosecution Counsel for DPP did not oppose the application but prayed that the terms of bail ought to be strict and Evaline be warned not to interfere with prosecution's witnesses.

**ANALYSIS**

6. I have perused the trial court's Ruling. It is clear that by that Ruling, the trial court was considering an application by the prosecution seeking to block Evaline from being granted bail.
7. Surprisingly, even though Evaline seeks this Court does revise the Ruling of the trial court, she failed to bring to this Court the application dated 1<sup>st</sup> March 2021, which application was the subject of that Ruling. How then does Evaline expect this Court to evaluate whether the trial court's Ruling is reviewable when the very application the trial court considered is not before this Court? On that ground alone the application before this Court fails.
8. The ruling of the trial court of 9<sup>th</sup> March, 2021 reveals that the complainant, before that court opposed the release of Evaline on bail mainly because he fears for his life.
9. **Section 20** of the **Victim Protection Act (VPA) 2014** permits a victim to be afforded opportunity to submit information for consideration by the court when the court is considering, inter alia, bail application. The following are the provisions of Section 20 VPA:-

**“(1) A victim has a right to submit any information for consideration to the-**

**a. ...**

**b. court during plea bargaining, bail hearing and sentencing.”**

10. The court of Appeal in the case ***JOSEPH LENDRIX WASWA V. REPUBLIC (2019) eKLR*** recognized the elevated rights now given to the victims under VPA. The Court of Appeal in that case had this to say:-

**“It is not incompatible with the right of a fair trial of an accused person or with the exercise of the prosecutorial powers of the DPP if a victim of an offence, either in person or through his advocate is allowed to exercise the full power of the court in the manner provided by section 150 of the Criminal Procedure Code so long as the safeguards in the proviso thereto are observed.**

**Accordingly, we find that a victim of an offence or his advocate or representative may exercise the plenitude of the powers of the court under section 150 of the Code with the permission and directions of the trial court.”**

11. The trial court therefore cannot be faulted for having denied Evaline bond. The trial court in denying Evaline bond clearly stated that the denial of bond was until the victim/complainant testified. It follows it is not a complete denial of bond, as submitted on behalf of Evaline.

12. The application in my view is devoid of merit and it fails.

#### **DISPOSITION**

13. In view of the above, the notice of motion dated 30<sup>th</sup> April, 2021 is dismissed.

**RULING DATED AND DELIVERED AT KIAMBU THIS 6<sup>TH</sup> DAY OF JULY, 2021**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Ndege

For the Applicant: N/A

For the Respondent : MS. Kathambi

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**