



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI

MISC. APPLICATION NO. 7 OF 2017

BETH WANJIRU MWARANGU...APPLICANT

versus

REPUBLIC.....RESPONDENT

RULING

1. The Constitution of Kenya under **Article 49(1)(h)** provides that an arrested person has the right **“to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”**

2. **BETH WANJIRU MWARANGU** the applicant has approached this court with an application by way of Notice of Motion dated 30th January 2017. The applicant seeks from this court a review of the order made on 9th January 2017 by the Nanyuki senior resident magistrate in **Criminal Case No. 53 of 2017** whereby that court denied the applicant bail pending trial.

3. The starting point which needs to be borne in mind is that the applicant was **charged in 1993** before the Chief Magistrate’s Court Nanyuki with **offence of obtaining money by false pretences contrary to Section 313 of Penal Code**. According to the affidavit of the investigating officer namely **Peter Nzemya** sworn on 9th January 2017 the applicant absconded her trial on 25th February 1997. On that date the Chief Magistrate’s Court in Nanyuki issued a warrant of arrest for the applicant.

4. The applicant was finally arrested on 7th January 2017 at Ongata Rongai town. When she was arrested it transpired that the trial original file in which she absconded had been destroyed. The trial court therefore opened a new file being **case no. 53 of 2017**. In that new matter the applicant sought bail which application was declined by the Senior Resident Magistrate. She now seeks from this court a reconsideration of her bail application.

5. The applicant bases her application on the grounds that she is now 70 years old and she has a serious health problem. She has deponed that being in prison will worsen her health condition.

6. The applicant absconded from her trial and has been in hiding for now twenty years. Although the Constitution provision favours the granting of bail, that provision however is displaced in the appropriate case. In the case of the applicant who has absconded her trial now for 20 years there is the real possibility that she will not turn up for her trial which has now resumed. A case in point **STELLATO –v- MINISTRY OF DEFENCE [2010] EWCA Civ 1435:-**

“[24] ... if the person granted bail does not comply with the conditions of his bail, he is liable to be returned to custody.....

All that his breach of the conditions of his bail does is to disentitle him to bail.”

7. In our Kenyan case **NGANGA vs REPUBLIC (1985) KLR 451** the court in considering bail application had this to say.

“Accused failure to surrender to bail on previous occasion will itself be good ground for refusing bail.”

8. In the light of the above, this court **declines to grant the applicant bail as sought.**

DATED AND DELIVERED THIS 15TH DAY OF MARCH 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Ndungu

Applicant: Beth Wanjiru Mwarangu

For applicant:

For the State:

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE