



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

MISC. CRIMINAL APPLICATION NO. 7 OF 2017

BETH WANJIRU MWARANGUAPPLICANT

Versus

REPUBLICRESPONDENT

RULING

1. The application under consideration is by way of Notice of Motion dated 2nd May, 2017. The applicant **BETH WANJIRU MWARANGU** (Beth) by that application seeks two prayers' namely:

(i) That the Honourable Court be pleased to review its Ruling and order delivered on 15th day of March 2017 declining to grant the applicant bail.

(ii) That the applicant be admitted to bail pending the hearing and determination of the Criminal Case No. 53 of 2017.

BACKGROUND

2. Beth was in 1993 charged before the Nanyuki Chief Magistrate's Court in Criminal Case No. 1205 of 1994 with the offence of obtaining money by false pretences **Contrary to Section 313 of the Penal Code**. Beth was on bail during her trial but on or about 1997, while her trial was still proceeding, Beth jumped bail and absconded from her trial. A warrant of arrest issued in that matter remained outstanding until her arrest in January 2017. On being arrested the criminal trial file could not be traced. The Nanyuki Chief Magistrate's court therefore opened a new file being Criminal case No. 53 of 2017.

3. While awaiting her new trial to commence Beth applied for bail before the Chief Magistrate's Court which application was declined. This court has not had the benefit of seeing the Chief Magistrate's Court Ruling in respect to that application.

4. Beth by her application dated 30th January, 2017 sought that this court review the order of the Chief Magistrate declining to grant her bail. This court by its Ruling dated 15th March, 2017 dismissed Beth's application. In dismissing that application this court by its aforesaid Ruling had this to say:

“The applicant (Beth) absconded from her trial and has been 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 new trial which has now resumed.”

5. Beth was yet undeterred. She filed an application dated 10th April, 2017 for bail before the Chief Magistrate's Court. That court by its Ruling dated 19th April, 2017 declined to grant Beth Bail.

NOTICE OF MOTION DATED 2nd MAY 2017

6. The aforesaid Notice of Motion application is the one under consideration in this Ruling. As correctly submitted by the Principal Prosecution Counsel Mr. Tanui, the court can only consider the alleged changed circumstances of Beth in its consideration of the Notice of Motion because the court has already declined to grant bail previously on the existing circumstances. That indeed is the correct position.

7. When the court previously considered the bail application, Beth deponed in her affidavit that she does not intend to abscond her trial during the hearing of the Criminal Case No. 53 of 2017, that she is 70 years old (**previously it was stated she is 80 years old**) and has been diagnosed with serious and sever health problems and her condition was deteriorating due to her confinement in custody; that her health condition cannot be managed while in custody; that she is a Kenyan Citizen of fixed abode and therefore was not of flight risk; and that the complainant had file a Civil Case before Nyeri Chief Magistrate's Court, which case was related to the present Criminal Case. The court was provided with a medical report of Beth dated 23rd February, 2017 from Nanyuki Cottage hospital. That report stated that Beth was suffering from sever hypertension; with sever osteoarthritis of the lumber spine and left knee. The report indicated that Beth needed hospital care. The above circumstances and Beth's medical condition were considered by this court when this court declined to grant bail to Beth by its Ruling of 15th March, 2017. It follows that those circumstances and Beth's then medical condition cannot be the basis of consideration for the present application. The present application is based on what Beth states is her deteriorating health condition. The medical reports of 11th and 12th April, 2017 relied on by Beth which indicate deteriorated health of Beth are negated by the Medical report of Nanyuki Teaching and Referral Hospital dated 29th May, 2017 which I reproduced here under as follows:

“The above named patient was admitted to the Medical Ward in Nanyuki Teaching and Referral Hospital on 26/5/2017 with history of headache and weakness of the left side for a day. She has a diagnosis of Transient Ischemic attack, hypertension and Congestive Cardiac Failure. She has previously been managed for osteoarthritis at our facility.

Patient is now stable, able to walk with assistance and continuing with physiotherapy. Her blood pressure is also well controlled and she is continuing with treatment. She is due for discharge soon to continue with medication and follow up at the Medical outpatient clinic plus physiotherapy.”

8. In view of the improved health status of Beth, as seen above, and because the trial before the Chief Magistrate was, as submitted by Mr. Makhoha Counsel for Beth, due to start yesterday 5th June, 2017 there is no possibility of delay in its conclusion. In view of the fact that the High Court has supervisory jurisdiction over the subordinate court as **provided under Article 165 (6) of the Constitution, I invoke that jurisdiction and order the Chief Magistrate to hear Criminal Case No. 53 of 2017 and to determine it within the month of July, 2017, unless for good reason shown. This Ruling shall be served upon the Chief Magistrate at Nanyuki Law Courts.**

9. In the end the application dated 2nd May, 2017 is hereby dismissed.

Dated and Delivered at Nanyuki this 6th June, 2017

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue/ Maria Stella

For the State:

Appellant: Beth Wanjiru Mwarangu

For the Appellant

Language

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE