



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION 66 OF 2020

RITA WANJIRU KARUME.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with the offence of stealing contrary to **Section 268(1) and 275 of the Penal Code**. The particulars were that between the 19<sup>th</sup> and 28<sup>th</sup> of April, 2020 in Rongai Area within Kajiado County alongside another jointly stole Kshs. 100,000/- from Equitel account number 07632xxx to MPESA account number 0759306xxx. She was convicted on her own plea of guilty. She was sentenced to pay a fine of Ksh. 150, 000/- in default serve an imprisonment term of one (1) year. Aggrieved by the decision, she sought an appeal and filed this application for bail pending the hearing and determination of the appeal.
2. The grounds of appeal were enumerated in a supporting affidavit dated 22<sup>nd</sup> May, 2020. The gist of her application is that the appeal had high chances of success. On this, learned counsel for the Applicant, Mr. Omosa submitted that the plea was not unequivocal. He blamed this on the fact that the language used in the trial proceedings was not clear. Therefore, the plea was not properly taken. Further, owing to the short sentence of one year imposed, the Applicant faced the likelihood of serving the entire sentence before the appeal is heard and determined. He further argued that the Applicant was not a flight risk, that she was a single mother to a three-year-old child and that owing to the Covid-19 pandemic it was in her best interest to avoid incarceration.
3. Counsel for the Respondent, Miss Akunja, opposed the application. It was her submission that the appeal has no chances of success. She contended that the plea was properly taken. She submitted that the charge and its particulars were read to the Applicant in English and translated to her in the Kiswahili language, consequent which she understood the proceedings and pleaded guilty. Accordingly, a plea of guilty was entered. Counsel submitted that the Applicant's likelihood of serving a significant part of the sentence was unfounded. This was because the trial court record proceedings had been typed and were short, constituting only two pages hence, hearing and concluding the appeal would be fast.
4. In rejoinder, Mr. Omosa stated that the language used was not clear. As well, from the responses given by the Applicant it was clear that she could not fully appreciate the proceedings. Further, that since the appeal was on both the conviction and sentence the appeal would take some time to hear. Lastly, that the state would not suffer prejudice if the Applicant was released on bail pending the hearing of the appeal.
5. The case law guiding courts on the principles to consider in an application for bail pending appeal is rich. A renown case is that **Jivraj Shah v R [1986] eKLR**. Basically, a court should consider first, whether the appeal has a likelihood of success and second, whether there exist any unusual or exceptional circumstances to warrant the grant of bail pending the hearing and determination of the appeal. A third criterion is set, which is whether the Applicant is likely to serve a substantial part of the sentence before the appeal is heard and determined. The latter is of course premised on an evaluation that, *prima facie*, the appeal is likely to succeed.
6. It is the burden of the Applicant to demonstrate that the appeal had high chances of success. All that the Applicant raised was that the language used was not clearly indicated in the trial court proceedings. Below is an excerpt of how the coram was recorded:

**“Before- Hon CK Mwaniki- SRM**

**Court Prosecutor- Sc Musyoka**

**Court Assistant- Awuor**

**Accused - 1 and 2 present**

**Interpretation- English/Kiswahili (Emphasis added)”**

7. The above shows that there was indeed interpretation between English and Kiswahili. And as such, the language that the court used during the proceedings was clear. I am further satisfied the record shows that the Applicant interacted with the court in Kiswahili. I therefore find that there is nothing in the record to show a *prima facie* substantial point of law on which this application is anchored.

8. The Applicant raised an argument that it is in her best interest to avoid incarceration due to the Covid-19 pandemic. She is however currently serving a lawful sentence, which in my view is not excessive. The law is settled that an Applicant for bail pending appeal does not enjoy the presumption of innocence as opposed to an Applicant for bail pending trial. In this case, the Applicant is deemed guilty and must serve the lawful sentence until such sentence is upset by a higher court.

I empathize that the Applicant has a young child, but by her own admission she committed the offence. The best the court can do is to facilitate an early hearing date of the appeal which she is at liberty to take forthwith.

10. In the end, I find that the Applicant has failed to demonstrate that she deserves to be released on bail pending appeal. I accordingly dismiss the application.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> JUNE, 2020.**

**G.W.NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. *Mr. Omosa for the Applicant.*
2. *Miss Kimani for the Respondent.*