



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**CRIMINAL APPEAL NO.8 OF 2019**

**(Appeal Originating from Nyahururu CM’s Court CMCR.2631 by: Hon. S. Mwangi - SRM)**

**CATHERINE MUGURE MUTUNGI.....APPELLANT**

**- V E R S U S -**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The applicant **Catherine Mugure Mutungi** was convicted by Hon. Mwangi SRM on 1/3/2019 and was sentenced to serve one year imprisonment. She is aggrieved by the said decision and filed this appeal.

The applicant also filed the Notice of Motion dated 13/3/2019 seeking to be released on bond pending the hearing and determination of the appeal. The grounds on which the application is premised are that the appeal has high chances of Success; that the applicant was out on bond in the lower court and attended court religiously; that she is sickly suffering from hypertension and amnesia and will suffer immensely if she remains in prison. She promises to abide by any conditions that the court may impose.

Ms. Rugut learned counsel for the State did not oppose the application for reasons that the applicant was sentenced to one year imprisonment and is likely to serve a substantial part of the sentence before the appeal is heard.

I have given due consideration to the application. The application is made under Section 357(1) of the Criminal Procedure Rules. The grant of an order under the said Section is an exercise of this court’s discretion. The principles that the courts consider in the exercise of the said discretion were discussed in the decision of ***Jivraj Shah v Republic 1986 KLR 605*** where the court said:

**“(1). The principle consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bond;**

**(2). If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be argued and the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist.”**

The primary consideration in an application of this nature is whether the appeal has overwhelming chances of success. The other considerations are whether there are exceptional circumstances to warrant the release of the applicant pending the hearing of the appeal which include the plea that the applicant is likely to serve a substantial part of the sentence before the appeal is heard.

The applicant was convicted on three counts of obtaining registration by false pretense contrary to Section 320 of the Penal Code and sentenced to serve one year on each count. The sentences were ordered to run concurrently. It means that the appellant will only serve one year in prison. The applicant was convicted on 1/3/2019. She is about to finish one month already. By the time the proceedings are typed and the record of appeal prepared, the applicant is likely to have served a substantial part of the sentence which may be prejudicial to her. For that reason alone, I allow the application to release the applicant on bail pending the hearing of the appeal.

The applicant may be released on Bond of Kshs.200,000/= plus one surety of the same amount or Cash Bail of Kshs.50,000/= (Fifty Thousand Shillings Only).

**Delivered, Signed and Dated at NYAHURURU this 29<sup>th</sup> day of March, 2019.**

.....

**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

Ms. Rugut for State

Soi – Court Assistant

Applicant - present