



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 3 OF 2019

LILIAN KAGENDO MURIITHI.....APPELLANT/APPLICANT

V E R S U S

REPUBLIC.....PROSECUTOR

RULING

1. The appellant was convicted with the offence of Conspiracy to defraud contrary to **Section 317 of the Penal Code** and making a false document without authority contrary to **Section 357(a) of the Penal Code**. She was sentenced to serve 1 year imprisonment on each count which sentence was to run concurrently and has now filed an application for bail pending appeal dated 29/01/2019.

2. The application is based on the following grounds:

a) That the appellant was convicted and sentenced to serve 1 year imprisonment on 7th January, 2019 vide the Resident Magistrate's Criminal Case No. 415 of 2013, Gichugu.

b) That the appeal has high chances of success.

c) That the appellant is apprehensive that she will have served a substantial part of her sentence by the time this appeal is heard and determined.

Section 357(1) of the Criminal Procedure Code provides:

After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:

3. When considering an application for bail pending appeal, the court has discretion in the matter which must be exercised judicially taking into consideration various factors as follows:

i) Whether the appeal has overwhelming chances of success.

ii) There are exceptional or unusual circumstances to warrant the court's exercise of its discretion.

iii) There is a high probability of the sentence being served before the appeal is heard.

4. The leading authority on this subject is **Somo –VS- Republic**. In refusing to grant bail the High Court, held that the most important ground in deciding whether or not to grant bail is whether the appeal has an overwhelming chance of being successful and that there were no exceptional or unusual circumstances to justify the grant of the bail.

5. In an application of this nature, an applicant is required to satisfy the existent of one or a combination of the conditions mentioned in the above cited authority.

1.Overwhelming chance of being successful

In order to ascertain whether the appellant's appeal has chances of success, one needs to go through the evidence adduced before the trial court and the judgment delivered by the learned trial magistrate but without going into any detail in order not to prejudice the court which will eventually hear the appeal.

5. As per the proceedings, 1st accused sold land to the complainant. However, the said land was fraudulently transferred in favour of the Phyllis and the appellant and the consent was found not to be genuine. In addition, the said transaction does not appear in the minutes of the Land control board. According to the appellant, she testified that she gave her husband all the documents for him to transact on her behalf and thereafter brought to her the title deed. Later, the 1st accused informed her he was selling his daughter's share and they executed an agreement. Her husband the 2nd accused confirmed that the appellant was engaged in some other duties and he was the one who took the application to the Land Control Board.

6. Having gone through the evidence adduced and the judgment delivered, the appellant's appeal has a chance of success.

1. Exceptional or unusual circumstances

She stated that her health is deteriorating since she is not being supplied with proper medication and she was convicted alongside her husband while they have young children who are school going and they are yet to report to school. I am satisfied that there are exceptional circumstances for consideration in an application for bond pending appeal.

2. High probability of the sentence being served

The appellant was sentenced to 1 year imprisonment and she will have served a substantial part of her sentence by the time appeal is heard and determined since the record of appeal is not yet ready. She was sentenced in January and we are already in March by the time the appeal is set for hearing she will have served a substantial part of the sentence.

7. In the premises therefore the appellant has put forward a case to warrant her release on bail pending.

8. I find that the application has merits. I allow it. I order that the applicant be released on bail pending appeal. She will sign a bond of Kshs 500,000/- plus one like surety. Upon signing the bond she will be released on bond pending the hearing and determination of the appeal.

9. The surety shall be examined by the Deputy Registrar.

Dated at Kerugoya this 18TH day of March 2019.

L. W. GITARI

JUDGE