

REPUBLIC OF KENYA

IN THE HIGH COURT AT NANYUKI

CRIMINAL APPEAL NO 90 OF 2018

CAROLINE NJERI MACHARIA.....APPELLANT/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON BAIL PENDING APPEAL

1. The Appellant herein, **CAROLINE NJERI MACHARIA**, was convicted after trial of four offences as follows -

- Count 1: **Stealing** a motor vehicle contrary to section 278A of the Penal Code.
- Count 2: **Impersonation** contrary to section 382(1) of the Penal Code.
- Count 3: **Forgery** contrary to section 349 of the Penal Code.
- Count 4: **Forgery** contrary to section 349 of the Penal Code.

She was sentenced respectively to imprisonment for 4 years, 1 year, 2 years and 2 years. All the sentences would run concurrently.

2. She has appealed against both conviction and sentence. In the meantime she has applied by **chamber summons dated 27/11/2018** to be admitted to bail pending hearing of her appeal. The learned prosecution counsel has not opposed the application.

3. I have perused the record of the trial court. Part of the evidence of the prosecution was **digital** in nature (comprising print-outs from **Safaricom Limited, Registrar of Persons** and the **National Transport and Safety Authority (NTSA)**). The trial court relied heavily upon this digital evidence to convict the Appellant. It is common ground between both the learned counsels for the Appellant and the Respondent that the digital evidence was produced and admitted in evidence without the necessary certificates as required by **section 106B(4)** of the **Evidence Act, Cap 80**. Such certificates are a mandatory condition precedent for production and admission of such electronic or digital documents in evidence.

4. There is also the issue of the identification parade at which the Appellant was identified by the complainant about one year after commission of the offence. It appears that the Appellant was transported to **Nanyuki Police Station** the previous day in the complainant's motor vehicle, who thus had ample time and opportunity to see the Appellant as a suspect prior to the conduct of the identification parade. The parade may therefore not have been conducted with **scrupulous fairness** as required by law, and the Appellant's identification therein may not be of much probative value.

5. In the circumstances, I am persuaded that the Appellant's appeal has overwhelming chances of success. I will thus admit her to bail upon the same terms as she had been accorded by the trial court – that is, upon her own cognizance in the sum of KShs 100,000/00 plus one surety in like sum. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 10TH DAY OF APRIL 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 11TH DAY OF APRIL 2019