



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL APPEAL NO. 27 OF 2018**

**EZEKIEL WAWERU WANGOI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

[1] The Notice of Motion that is the subject of this Ruling is dated **3 May 2018**. It was filed pursuant to **Section 357(1)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**. It seeks orders that the Applicant, **Ezekiel Waweru Wangoi**, be admitted to bail pending the hearing and determination of the appeal herein. The application was premised on the grounds that the Applicant was sentenced to 2 years' imprisonment for stealing; and that he had filed an appeal which has high and probable chances of success. It was therefore sought that the Applicant, who has been in custody since **20 April 2018**, be granted bail as he is willing and ready to abide by whatever terms the Court may impose.

[2] In support of the application, the Applicant relied on his affidavit sworn on **3 May 2018**, wherein he deposed that he was convicted on **20 April 2018** and sentenced to serve 2 years' imprisonment for stealing; and that being aggrieved by the said conviction and sentence, he has filed this appeal. He averred that he is ready and willing to abide by such terms as the Court may set; and that he believes his appeal has high chances of success. He further averred that he has a young family of school going children for whom he is the breadwinner. The application was urged by **Ms. Gona** for the Applicant, who reiterated the grounds aforementioned and posited that sufficient grounds have been laid for the Applicant's release on bond.

[3] **Ms. Kegehi**, Learned Counsel for the State opposed the application. Her argument was that the Applicant pleaded guilty; and that his plea was unequivocal. She also submitted that all the requirements laid down in the case of **Adan vs. Republic** were met in the plea-taking process and that language was Kiswahili, which the Applicant understands well; and therefore that it cannot be said that the appeal has outright chances of success. It was further the submission of **Ms. Kegehi** that the sentence imposed on the Applicant was lawful, that no exceptional circumstances, such as sickness, had been disclosed in the Supporting Affidavit to warrant the release of the Applicant. She urged the Court to note that the Applicant is yet to serve a substantial portion of his sentence; and that, in any case, under **Article 49** of the Constitution, the Applicant has no absolute right to bail as he is a convict and no longer a suspect. She urged that the application be dismissed.

[4] The Record of Appeal filed herein shows that the Applicant was charged before the lower court in the **Chief Magistrate's Criminal Case No. 361 of 2018** jointly with **Robinson Kiprono Yator** and **Gilbert Kiptoo Kiprop**, (the Appellants in **Eldoret HCCRA No. 28 and 29**) and two others before Iten Senior Principal Magistrates Court with the offence of **Stealing** contrary to **Section 275** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. In the alternative, they were charged with **Handling Stolen Goods**, contrary to **Section 322(1)** of the **Penal Code**. The Applicant was the 2<sup>nd</sup> Accused before the lower court. The record of the lower court further shows that the Applicant and his co-accused persons pleaded guilty to the Main Charge and were, on the **20 April 2018**, sentenced to two years' imprisonment. Being aggrieved by the outcome, the 1<sup>st</sup> Applicant filed this appeal praying that the entire conviction recorded before the lower court be quashed and sentence set aside.

[5] With regard to the bail application, I note that the Applicant has proffered the same grounds as did the Applicants in **HCCRA No. 28 of 2018** and **HCCRA No.29 of 2018**. Accordingly, this Court having already pronounced itself in respect of similar applications by the 4<sup>th</sup> and 5<sup>th</sup> Defendants, in the Appeals aforementioned, I would for similar reasons allow the application herein and make orders as hereunder:

[a] That the Applicant be released on a bond of **Kshs.150,000/=** with one surety in like sum, to be approved by the Deputy Registrar;

[b] The Applicant shall attend Court for mention before the Deputy Registrar once every month or as otherwise ordered by the Court.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 8<sup>TH</sup> DAY OF AUGUST, 2018**

**OLGA SEWE**

**JUDGE**