



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 39 OF 2018

CATHERINE WAWIRA MWANGLI.....APPLICANT/APPELANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The applicant in her notice of motion dated 17/10/2018 seeks for orders of release on bail pending appeal. It is supported by the grounds on the face of the application and in the affidavit of the applicant which may be briefly stated; -

a) That the appeal has high chances of success.

b) That the applicant was sentenced to a custodial sentence without proper basis given the nature of the charge.

c) That she is a mother of young children and the sole breadwinner of the family.

d) That she pays school fees for her siblings.

2. In the replying affidavit of the prosecution counsel Leah Mate, the application was opposed on grounds that the affidavit failed to demonstrate that her appeal has high chances of success.

3. It was further stated that the evidence adduced by the prosecution was cogent. The counsel argued that the applicant failed to attach medical report to prove that she is of ill-health. It was further stated that the sentence of one (1) year imprisonment was too lenient for the offence of assault.

4. I have carefully considered the grounds supporting the application. The applicant is already a convict and not entitled to bail as a right having lost the presumption of innocence.

5. In an application of this nature the applicant is required to satisfy the court on two main grounds: -

a) That her appeal has high chances of success.

b) In the alternative, that there are special or extraordinary circumstances that exist to justify release on bail.

6. I am in agreement with the prosecution counsel that the applicant has not even attempted to show any special circumstances.

7. On extra-ordinary circumstances the applicant has stated that few issues. Being a mother of young children whose particulars of even ages have not been given is in my view not an extra- ordinary circumstance. Neither does paying school fees for siblings on special circumstance.

8. In the applicant's further affidavit, she made an attempt to challenge her conviction and the custodial sentence but this came a bit late in the day because the prosecution had no chance of responding to the issues raised.

9. However, I am of the view that the mitigation of the applicant and the fact that she was a first offender ought to have been considered in sentencing with a view of giving a non-custodial sentence.

10. For this reason and the fact that the offence is a misdemeanor, this court will allow this bail application on the following terms:

i. That the applicant be and is hereby released on bond of Kshs. 50,000/= with surety of alike amount.

ii. That the pendency of this appeal, the applicant will not leave the jurisdiction of this court without the permission of the court.

iii. That the applicant will attend monthly mentions before the Deputy Registrar pending disposal of the case.

iv. That this appeal be fast-tracked and be admitted and within three months from the date of this ruling.

11. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF NOVEMBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Mr. Andande for applicant/appellant

Ms. Mati for Respondent

Applicant present in person