



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 90 OF 2016

STEPHEN A. MUSINA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By Notice of Motion dated 15th March, 2016, brought under **Sections 356(1) and 357(1) of the Criminal Procedure Code** the Applicant herein prays that he be released on bail/bond pending the hearing and determination of an appeal. The Applicant contends that his appeal has overwhelming chances of success. He is of the view that he would likely be prejudiced if he is not released on bail pending appeal as the appeal may take long to be heard. The application is supported by the affidavit of Paul K. Kamau, an advocate of the High Court of Kenya, who filed the application on behalf of the Applicant.

The Applicant was charged with two counts with failure to disclose a private interest to one's principal contrary to **Section 42(1)(a) and (b) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003**. At the close of the trial he was found guilty and was convicted accordingly. He was sentenced to two and a half years imprisonment in respect of each of the counts. The sentences were to run concurrently. He accordingly filed an appeal against both the conviction and sentence. A copy of the Petition of Appeal dated 15th March, 2016 is annexed to the Supporting Affidavit. A look at it clearly shows that there are weighty issues which require to be determined on appeal and ultimately would render the appeal arguable. However, despite the fact that the copy of the Petition of Appeal is dated and signed by the counsel who filed it, the same is not serialized with a registry number. It does not also bear a registry stamp indicating the date of filing. The application as well as the Supporting Affidavit do not also make reference to the serial number of the appeal filed. A similar scenario obtains with respect to the Supplementary Affidavit filed on 22nd March, 2016. Effectively, there is no evidence at all in the file that there exists an appeal against the conviction and sentence of the judgment in Milimani Anti-Corruption Case number 18 of 2012. The application having been brought under Sections 356 and 357 of the Criminal Procedure Code would only be allowed in those circumstances if this court is the court that convicted or sentenced the Applicant. Bail pending appeal before an appellate court being a discretionary relief will only be granted where the Applicant demonstrates that the appeal filed has overwhelming chances of success and that there exists any exceptional or unusual circumstances to warrant the granting of bail pending appeal. The rationale to this is that it is cardinal principle that an Applicant having been convicted by a competent court must serve his sentence unless that conviction and sentence are set aside. Therefore, the Applicant herein not having demonstrated that he has filed an appeal, makes me conclude that if I grant bail he will take advantage and probably not file the appeal at all, yet he ought to be serving a sentence passed by a competent court. I would not in the circumstances delve into analyzing whether or

not, based on the proceedings before me the intended appeal is likely to succeed.

In the result, I strike out the application with no orders of costs. The Applicant is at liberty to come back to court with a fresh application if he so deems it fit. It is so ordered.

DATED and SIGNED this 8TH day of April, 2016.

G.W. NGENYE-MACHARIA

JUDGE

DELIVERED this 18th Day of April, 2016.

L.KIMARU

JUDGE

In the presence of:

1..... *for the Applicant*

2.....*for the Respondent.*