

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CRIMINAL APPLICATION NO. 142 OF 2016

HUSSEIN ADAN.....APPLICANT

Versus

REPUBLICRESPONDENT

RULING

After hearing the respective submissions, I find that this is an application that should succeed.

First, on the success of the appeal, a weighty issue regarding whether or not the person who issued the Applicant with the pass of absence from work, namely Warrant officer Wekesa, cannot be wished away as frivolous. Second, PW2 the said warrant officer Wekesa admitted that he indeed issued the pass to the Applicant and further extended it. The question on appeal will be whether it was the duty of the Applicant to disprove the mandate of PW2 in issuing the pass. This aspect cannot also be said to be a frivolous point to be urged on appeal.

On these two grounds, I think that the appeal has a high chance of success.

Three, having made the above observation, it follows that given the short period of imprisonment, if the application is not granted, the applicant is likely to have served the entire punishment before the appeal is heard and determined.

In the end, the application is allowed. I admit the applicant to bail pending appeal. He shall pay a cash bail of Kshs. 50,000/= or deposit a surety bond of Kshs. 100,000/= to be assessed by the Deputy Registrar of this court.

I further order that the Appellant do serve the record of appeal within the next 7 days. He shall thereafter, within 14 days, cause the appeal to be admitted and the appeal be fixed for hearing within 30 days. The Deputy Registrar to fast track the file.

DATED and DELIVERED in Nairobi this 24th day of May, 2016.

G.W. NGENYE-MACHARIA

JUDGE