



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA.**

**MISC. CRIMINAL APPLICATION NO. 46 OF 2016.**

**HORNS N I ::::::::::::::::::::::::::::::::::: APPLICANT.**

**VERSUS**

**REPUBLIC ::::::::::::::::::::::::::::::::::: RESPONDENT.**

**R U L I N G.**

1. The applicant Horns N I was charged with the offence of being in possession of counterfeit goods contrary to section 32 (c) as read with 35 (1) of the Anti-counterfeit Act, 2008.
2. This court has been moved under the provisions of section 357 of the Criminal Procedure Code to release the applicant on bail pending appeal.
3. At the hearing of the application Mr. Minishi, learned counsel for the applicant submitted that they were praying for bail pending appeal on reasonable terms. He informed the court that the applicant was convicted and sentenced to serve 10 months imprisonment and to pay a fine of Ksh. 1,488/= by the Hon. J. Ong'ondo on 6<sup>th</sup> April, 2016 and that the applicant has filed an appeal which has overwhelming chances of success. He added that the applicant is a sickly person suffering from HIV/AIDS and his continuous stay in custody is affecting his health adversely. Mr. Minishi submitted that if the orders sought are not granted, the appeal will be rendered nugatory as the applicant will have served a substantial part of his sentence. Mr. Minishi relied on the applicant's supporting affidavit sworn on 19<sup>th</sup> April, 2016 to augment his submissions.
4. Mr. Ngetich, learned prosecuting counsel did not oppose the application. He however urged the court to give stringent bail terms as the applicant was convicted and is serving sentence.

**Determination of the application**

5. The grounds upon which an applicant may be released on bail pending appeal are well spelt out in the cases of **Mundia vs. Republic (1986) KLR 623, Ademba vs. Republic (1983) KLR and Somo vs. Republic (1972) EA 476. For an applicant to benefit from bail pending appeal, he must show that his appeal has overwhelming chances of success, that there are exceptional and unusual circumstances; and that the appeal is likely to be delayed such that the applicant may serve his sentence or a substantial part thereof by the time the hearing is reached among other considerations.**
6. This court notes that an applicant who applies for bail pending appeal stands on the premise that he has already been found guilty of an offence and has been convicted accordingly.
7. The applicant in his affidavit dated 19<sup>th</sup> April, 2016, has attached a medical report and a patient card to show that he has been attending HIV clinics at Vihiga District Hospital after being enrolled into care on 25<sup>th</sup> February, 2004. This information was however not disclosed to the learned trial magistrate by the applicant when he was given an opportunity to mitigate. He prayed for leniency then and informed the court that he had a sick person at home.
8. I will give the applicant the benefit of the doubt with regard to his medical condition and I hereby exercise my discretion and release the applicant on bail pending appeal on medical grounds. This

will enable him to attend HIV clinics and to take his Anti-retroviral medication from home. I also note that the applicant might serve the entire sentence of 10 months imprisonment before his appeal is heard and determined.

9. The applicant will therefore be released on bail pending appeal on execution of his own personal bond of Ksh. 20,000/= with a surety of a similar amount.

It is so ordered.

**DELIVERED, DATED and SIGNED at KAKAMEGA on this 19<sup>TH</sup> day of MAY, 2016.**

**NJOKI MWANGI.**

**JUDGE.**