



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CRIMINAL APPEAL NO. 36 OF 2014

REPUBLIC.....PROSECUTOR

-VERSUS-

REBBECA MWIKALI MULI.....APPELLANT

RULING.

1. Before me is an application by the appellant, seeking bail pending appeal on grounds inter alia, that the appellant is ailing, and secondly, that her appeal has high chances of success. The state opposes the application citing lack of evidence of the alleged ailment and asserting that such would, at any rate not constitute exceptional circumstances. The state also disputes that the appeal has high chances of success.
2. Having considered the arguments made and the grounds of appeal in the light of the proceedings in the Lower Court I take the following view. The principles for granting bail pending appeal are well settled. The court of appeal in **Jivraj Shah -Versus- Republic (1986) KLR 605 at Page 606-607 stated inter alia:**

“(T)he principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged; and that the sentence or a substantial part of it will have been served by the time the appeal is heard, conditions for the granting of bail will exist.

The decision in Somo -Versus- Republic (1972) EA 476 which was referred to by this Court with approval in Criminal Application No. 14 of 1986 Daniel Dominic Karanja –Versus-Republic where the main criteria was stated to be existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued”.

3. The grounds of appeal in the instant case primarily attack the quality of evidence upon which the conviction was based, as well as the sentence itself. I agree with the state that there is no proof of the alleged illness of the appellant, which by itself may not necessarily constitute exceptional or unusual circumstances. With regard to the potential of the appeal itself, this court is not convinced at this stage that the same has overwhelming chances of success.

4. It is true that the appellant was not given an option of a fine by way of sentence. However, the appellant is unlikely to serve a substantial portion of her 3 years' sentence before this appeal is heard as the court is able to dispose of the same within a **couple of months**. In the circumstances, I find no merit in this application and will dismiss it. Let the record be prepared urgently and the matter be placed before me for admission.

Delivered and signed at NAIVASHA on this 19th day of January 2015.

In the presence of:

Mr. Ombati for the appellant

Miss Kavindu for the state

Court Clerk: Stephen

C. MEOLI

JUDGE