



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL APPEAL NO 51 OF 2013**

**RICHARD MULE NZIOKI .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. The Applicants application dated **16<sup>th</sup> July, 2013** is for bail pending appeal. It is premised on grounds that the appeal is forth- strong and reasonable with overwhelming chances of success; the plea was not equivocal; the subsequent conviction and sentence were illegal and the applicant is willing to abide with conditions to be imposed. It is supported by an affidavit sworn by **John Ndungwa Kimeu** his advocate. The application is opposed by the State.
2. I have carefully considered submissions filed by both the applicant and the State Counsel. I have also considered this application in light of grounds of appeal filed.
3. The only reason given why the appellant should be released on bail is the averment that the appeal has overwhelming chance of success. In his submission Counsel for the appellant pointed out that if the application is not allowed the appellant will suffer in prison. While he will ultimately be released on appeal.
4. In the case of *Somo versus Republic [1972] E.A. 476* it was stated:-

*“But generally speaking, whatever grounds may properly be taken into account in favour of the grant of the application... the most important of them is that the appeal will succeed. There is little, if any, point granting the application if the appeal is not thought to have an overwhelming chance of being successful... (see Criminal Appeal No. 264 of 2013- Francis Murathe versus Republic [2013] eKLR)”.*

This means that the onus was upon the applicant to demonstrate that his appeal will be successful.

5. In opposing the application the learned State Counsel stated that the applicant had not demonstrated that his appeal has overwhelming chances of success as the grounds of appeal were sought to dismiss the evidence adduced at trial.
6. The appellant was convicted of the offence of **stealing a motor-vehicle** contrary to **Section 278A of the Penal Code** with an alternative charge of **handling stolen goods**. Evidence adduced established they were arrested prior to crossing into Tanzania. To do so documents without authority had to be made. No impression has been created by the appellant that the evidence adduced is weightless such that it shall result into the conviction of the Lower Court being overturned
7. In the circumstances I decline to grant the applicant bail pending appeal. The application is dismissed.
8. It is so ordered.

**DATED, DELIVERED and SIGNED** this **17<sup>th</sup>** day of **JANUARY, 2014.**

**L.N. MUTENDE**

**JUDGE**