



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 216 OF 2013

HALIMA SAIDI ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

RULING

1. The application dated **24<sup>th</sup> September 2013** is for bail pending appeal. It is premised on grounds that the applicant will abide with reasonable conditions or terms to be set by the court; there are no compelling reasons for denial of bail; the applicant was on bail in the lower court and that she is entitled to bail as of right.
2. The applicant was charged with the offence of stealing contrary to **Section 275 of the Penal Code**. In the alternative the charge was handling stolen property contrary to **Section 322(2) of the Penal Code**. The property in issue was some 3 metal dust bin boxes valued at **Ksh.30,000/=**
3. She was tried, convicted on the alternative count and sentenced to serve **four (4) years** imprisonment. Being aggrieved by the conviction and sentence thereof she appealed hence this application to be released on bail.
4. Conditions to be considered in such cases were stipulated in the case of **Dominic Karanja versus Republic 1986 KLR 612** where the court held thus:
  - i. ***“The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.***
  - ii. ***The previous good character of the applicant and the hardships, if any, facing her family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.***
  - iii. ***A solemn assertion by an applicant that she will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.”***
5. In his submission, counsel for the applicant **Mr. Tamata** stated that the applicant suffers from uterine ulcers. She has been bleeding as a result and that there were no compelling reasons to have her incarcerated.
6. **Mrs. Abuga**, learned state counsel opposed the application arguing that the applicant being a convict could not be admitted to bail unless she had sufficient grounds. She stated that the applicant had not demonstrated that exceptional circumstances existed to warrant her release on bail. She dismissed the assertion that the applicant suffered from uterine ulcers as the medical documents indicated the uterus was normal. She prayed for the appeal to be heard on priority basis.
7. This is a matter where the applicant’s counsel did not argue that the appeal has an overwhelming chance of succeeding. This is the most important consideration the court should have in mind. It has been stated that the applicant has ill health. A medical report annexed to the application dated **4<sup>th</sup> September 2013** show that the uterus is normal. No fibroids were seen. The scan was done following complaints of abdominal discomfort. The applicant was found to be well. Therefore,

- there is no exceptional circumstance that would make this court grant her bail.
8. It has not been suggested that there will be delay in hearing of the appeal. In the premises I decline to grant the order sought. Accordingly, the application is dismissed.

**DATED, SIGNED and DELIVERED at MACHAKOS this 21<sup>ST</sup> day of MAY, 2014.**

**L.N. MUTENDE**

**JUDGE**