



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.240 OF 2013

JACINTA WANGECI.....APPELLANT/APPLICANT

VERSUS

REPBLIC.....RESPONDENT

RULING

1. The Applicant was charged with two counts of **Robbery with Violence** contrary to **Section 296(2)** of the **Penal Code** and was also charged with the offence of **Kidnapping with intent to confine** contrary to **Section 259** of the **Penal Code**.
2. She was convicted and sentenced to twenty five (25) years imprisonment on the charges.
3. Being dissatisfied with the conviction and sentence, the Applicant filed Criminal Appeal No.240/2013.
4. By a Notice of Motion under **Section 357** of the Criminal Procedure Code and Article 49(1) of the Constitution of Kenya 2010 the Applicant seeks to be admitted to Bail pending appeal.
5. The application is predicated on the grounds on the face of the application and is supported by the Supporting Affidavit.
6. The Applicant depones that the appeal has overwhelming chances of succeeding due to the fact that on all three (3) counts, no evidence was adduced by the prosecution placing the Applicant at the scene of the robbery.
7. Further, the Applicant avers that on Count 1 the particulars set out on the Charge Sheet were not proved particularly on the items that were robbed from **P.W.1**.
8. Similarly on the second Count of Robbery With Violence, the Applicant submits that the witness was also unable to testify on what he was robbed of.
9. On Count 3, which is the charge of kidnapping, it was submitted that identification and the key ingredients of kidnapping were not proved.
10. For those reasons, Counsel urged the court to release the Applicant on bail as the Appeal has overwhelming chances of success and there being no readily available hearing dates, there was a likelihood of the Applicant, serving a greater part of the sentence before the Appeal is heard and determined.
11. Prosecution Counsel for the State conceded to the application on the grounds that there was no direct evidence linking the Applicant to the Commission of the offences.
12. After hearing the submissions of both prosecuting counsel for the State and Learned Counsel for the Applicant and after careful perusal of the Petition of Appeal, the proceedings and the judgment of the lower court, this court is persuaded that the Applicant has made out a **prima facie** case that the appeal has overwhelming chances of success.
13. The Applicant has demonstrated that there is evidence that if taken into consideration by the appellate court it may result in quashing of her conviction and setting aside of her sentence.
14. This court is guided by the case of **Somo V. Republic**, 1972 E.A. 476 and is also persuaded that there being no dates readily available for the hearing of the main appeal there is a likelihood of the

- Applicant serving a substantial part of her sentence before the appeal is heard.
15. For the reasons stated above, this court finds the application to be meritorious and finds no reason to deny the Applicant her freedom pending the hearing of the appeal.
16. The application is hereby allowed and the Applicant is hereby admitted to bail upon the following terms:

- i) Bond is set at Kshs.500,000/= with two (2) sureties of a similar amount.
- ii) The Applicant to be of good conduct pending hearing and determination of her appeal.
- iii) The Applicant to report to the local D.C.I.O.'s office on the 30th day of each and every succeeding month until the appeal herein is heard and determined

It is so orders.

Dated, Signed and Delivered at Nakuru this 30th day of June, 2014.

A. MSHILA

JUDGE