

IN THE HIGH COURT OF KENYA

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 201 OF 2014

PETER FRANCIS KIARIE KAMAUAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

This is an application for bail pending the hearing and determination of the appeal filed by the applicant. He was convicted of the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code and sentenced to pay a fine of Kshs. 2,000,000/= in default to serve a period of four years imprisonment.

At this stage the applicant has to demonstrate that his appeal has overwhelming chances of success. It is feared that he may end up serving his sentence before the appeal is heard. A person convicted of an offence under Section 313 of the Penal Code is liable to imprisonment for three years. The learned state counsel concedes that the default sentence imposed by the learned trial magistrate was above the penalty for the offence. That is not enough. Having elected to impose a fine upon the applicant the default sentence could not exceed twelve months in view of the provisions of Section 28 of the Penal Code.

Further, the facts of the case point to a civil dispute as opposed to a criminal intent on the part of the applicant. My assessment of the case is that the appeal stands overwhelming chances of being successful and therefore the applicant should not remain in prison. For those reasons the application was allowed on 16th July, 2014.

Dated and delivered at Nairobi this 31st day of July, 2014.

A. MBOGHOLI MSAGHA

JUDGE