

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 195 OF 2014

EDWARD MUDAMBA MWASIAGI APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. This application has been brought by way of Chamber Summons dated 26th June 2014, under **Section 357** of the of the **Criminal Procedure Code** Cap 75 Laws of Kenya. It is supported by the affidavit of Hellen Vutagwa of the same date. It mainly seeks that the court be pleased to admit the applicant to bail pending the hearing of his criminal appeal No. 33 of 2014. The grounds of the application are as appears on the face thereof.
2. Learned counsel Mr. Macharia submitted that the applicant has an arguable appeal with high chances of success. He argued that the applicant was released on bond while on trial in the lower court and at no time did he fail to appear for hearing or mention. Further that the applicant is the bread winner of a family of three young children and a house wife, and the children are in school and therefore need his care and support.
3. Mr. Kabaka learned counsel for the state conceded the application arguing first, that the trial court failed to observe the provisions of **Section 200(3)** of the **Criminal Procedure Code** when one trial magistrate exited from the file and another one took over. Second, that the sentence imposed upon him was excessive in light of the fact that his co-accused convicted of the same charge received a much lighter sentence. Third, that the charge sheet was defective.
4. The principle consideration in an application for bail pending appeal as stated by the Court of Appeal in the case of **Jivraj Shah vs. Republic [1986] LLR 605**, was *inter alia*, that bail pending appeal would be considered where there were existing exceptional or unusual circumstances upon which the Court of Appeal could fairly conclude that it was in the interest of justice to grant bail. Secondly, that it may be granted where 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 substantial part of it will have been served by the time the appeal is heard. In that instance conditions for granting bail will exist.
5. From the record the applicant was convicted in count 9, 10, 11 and 12 and this carried his name. There is therefore no discernible defect in the charge sheet. It does appear prima facie however, that his appeal is likely to succeed especially for reason of failure to apply **Section 200(3)** of the **Criminal Procedure Code**. Mr. Kabaka was therefore wise to concede this application.
6. Reasons wherefore I find that the application for bail pending appeal is meritorious and is allowed. The applicant may be released on bond of Kshs.500,000/= with one surety of like

amount and the surety shall be examined by the Deputy Registrar.

SIGNED DATED and DELIVERED in open court this 24th day of July 2014.

L. A. ACHODE

JUDGE