



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 137 OF 2014
(From the original Conviction and Sentence in Criminal Case No. 787 of 2010 in the
Chief Magistrate's Court at Mombasa: Hon. J. Gandani)

OMAR MWAGAMBERE MWACHUMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Appellant **OMAR MWAGAMBERE** was Convicted and Sentenced to one (1) year imprisonment for the offence of neglect to prevent a felony contrary to Section 392 of the Penal Code.

The particulars being that:-

“On the night of 4th and 5th March, 2010 at Shiva Carriers Garage Mombasa County, jointly with others not before the Court being a night security guard of Shiva Carriers Ltd. Parking yard, failed to prevent a commission of a felony namely stealing”.

This is Notice of motion application dated the 16th day of August, 2014 brought under section 357 of the Criminal Procedure Code.

It seeks grant of bail pending hearing of the appeal.

The grounds are that the appeal has a high chance of success.

Secondly, that the Accused was Sentenced to one (1) year imprisonment on 1st August, 2014 and that there is real danger and possibility of him serving the whole imprisonment term before his appeal is heard and determined. This application is not opposed by the director of Public Prosecution.

I have perused the record of proceedings and the Judgment in this case and I am satisfied that the appeal has high chances of success.

The Appellant is admitted to a bond of Ksh. 200,000/= with one surety of similar amount.

Ruling delivered dated and signed this **26th** day of **September, 2014**.

.....

M. MUYA

JUDGE

26TH SEPTEMBER, 2014

In the presence of:-

Learned Counsel for the appellant Atanacha holding brief Lumatete

Learned Counsel for the State Mr. Jami

Court clerk Musundi