



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO.257 OF 2014**

**MONICA MUTHONI NJOROGE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Monica Muthoni Njoroge was charged with the offence of **causing grievous harm** contrary to **Section 234** of the **Penal Code**. The particulars of the offence were that on 1<sup>st</sup> January 2011 at Githurai 44 Estate in Nairobi County, the Applicant **caused grievous harm** to Susan Wanja Njeri. The Applicant pleaded not guilty to the charge. After full trial, the Applicant was convicted as charged. She was sentenced to serve five (5) years imprisonment. The Applicant was aggrieved by her conviction and sentence. She has filed an appeal to this court. That appeal is pending hearing and determination.

Pending the hearing of the appeal, the Applicant has filed an application pursuant to **Section 357(1)** of the **Criminal Procedure Code**. She prays that she be released on bail pending the hearing of the appeal. The application is supported by the annexed affidavit of Onesmus Mwangi Muraguri, the advocate of the Applicant. In the affidavit, he swore that the Applicant's appeal had an overwhelming chance of success because the proceedings leading to the conviction of the Applicant was riddled with the procedural irregularities. He deponed that the trial court allowed the prosecution to adduce further evidence after the prosecution had closed its case. The trial court did this without seeking the consent of the Applicant.

During the hearing of the application, Mr. Muraguri reiterated this point. He further added that the case was heard by several magistrates. During the takeover by one of the magistrates from the previous magistrate, **Section 200** of the **Criminal Procedure Code** was not complied with. In his view, this rendered the subsequent proceedings unlawful. He therefore urged the court to release the Applicant on bail pending appeal. Ms. Ng'etich for the State opposed the application. She submitted that the sentence imposed on the Applicant was lenient considering the fact that the maximum sentence that can be imposed in respect of the offence that she was convicted is life imprisonment. She stated that **Section 200** of the **Criminal Procedure Code** was complied with by each of the magistrate who took over the proceedings. As regard the admission of the evidence of one of the witnesses after the prosecution had closed its case, she submitted that the trial court disregarded the evidence of that witness in her judgment. In the circumstances, she urged the court to dismiss the application.

This court has carefully considered the rival arguments made in this application. The principles to be considered by this court in determining whether or not to grant bail pending appeal are well settled. The Applicant must establish that she has an appeal with high chances of success. She must also establish that the existence of exceptional or unusual circumstances that would persuade the court to release her on bail pending appeal (See **Ademba –vs- Republic [1983] EA 442**). In the present application, the Applicant has indeed established that there were procedural irregularities in her trial which may ultimately vitiate her conviction and sentence. This court will not render an opinion on the merit or otherwise of the appeal. Suffice for the court to state that the Applicant has established a case for this court to release her on bail pending the hearing of the appeal.

In the premises therefore, the Applicant is hereby released on bail pending the hearing of the appeal on condition that she deposits a cash bail of Kshs.200,000/- or alternatively posts a bond of Kshs.500,000/-

with one surety of the same amount. The Applicant shall appear before the Deputy Registrar of this court once every month until the hearing of the appeal. The Applicant is further ordered to prepare, file and serve the record of appeal upon the Director of Public Prosecutions within sixty (60) days of the date of this Ruling. The Applicant shall fix the hearing of the appeal within six (6) months of the admission of the appeal to hearing. It is so ordered.

**DATED AT NAIROBI THIS 18<sup>TH</sup> DAY OF NOVEMBER 2014.**

**L. KIMARU**

**JUDGE**