



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Criminal Application 72 of 2013

ALEX NJIHIA NDIRANGU .....APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

*(From original conviction and sentence in criminal case Number 1209 of 2010 in the Chief Magistrate's Court at Nairobi – Ms. F. Munyi (AG. PM) on 25<sup>th</sup> February 2013)*

RULING

1. This is a Chamber Summons dated 6<sup>th</sup> March 2013, brought under **Article 50** of the **Constitution of Kenya, 2010**, and **Section 123(1)(2) & (3)**, and **357(1)** of the **Criminal Procedure Code, Cap 75 Laws of Kenya**. The applicant, Alex Njihia Ndirangu seeks to be admitted to bail/bond pending the hearing of appeal No. **42 of 2013** that he has filed in the High Court. The appeal stems from a conviction in **CM Cr. Case No. 1209 of 2010**, by Ms. F. Munyi, the Acting Principal Magistrate Nairobi law courts, for the offence of stealing by servant contrary to **Section 281** of the **Penal Code**. He was sentenced to serve 8 years imprisonment without option of fine.
2. It was argued by Mr. Kamau, learned counsel for the applicant that they had raised serious grounds in the pending appeal on the misdirection by the trial court. That for example; the learned trial magistrate drew conclusions on issues which were not supported by any evidence. That there were differences between the charge sheet and the evidence on the sum stolen. That the branches of Family Bank from where the money was withdrawn were, Fourways Towers, Kariobangi branch and Kisumu branch, but that the applicant who worked at Fourways Towers was the only one to be arrested, and that his teller amount was limited, so that any amount above Kshs.100,000/= was authorised by the Manager.
3. Mr. Kamau argued further that the mental guilt and intent on the part of the applicant was not considered by the trial court, and finally that the character of the applicant throughout the three year period of the trial, showed that he never tampered with any of the witnesses, neither did he attempt to abscond.
4. Miss Kuruga, learned State Counsel opposed the application stating that bail is not an absolute right on appeal since the applicant had already been convicted. She further submitted that the appeal had no chances of success because the Document Examiner stated that the disputed signature did not agree with that of the account holder and was therefore, a forgery.
5. The learned State Counsel submitted that all the four withdrawals were done under the applicant's signature, and that therefore, the applicant was rightly convicted and should wait for the appeal to be heard.
6. The most important issue to be considered in the granting of bail/bond pending the hearing and determination of an appeal, is if the filed appeal has overwhelming chances of success. If it does there is no justification for depriving the applicant of his liberty in the intervening period.
7. The previous good conduct of the applicant during trial, as urged by learned counsel Mr. Kamau, may stand him in good stead but does not amount to exceptional or unusual circumstances to be

considered by the court for purposes of granting bail/bond pending the determination of appeal.

**8.** Without delving into the merits and demerits of the pending appeal, I have perused the proceedings and find that the question of the applicant's mens rea is arguable on appeal. I therefore find that the application before me is meritorious.

**9.** On the terms of the bond granted, although the applicant lost the presumption of innocence upon conviction, in the circumstances of this case I reinstate the bond terms that were in operation while he was on trial in the subordinate court.

**10.** The application is therefore allowed. The applicant may therefore be released on a bond of Kshs.500,000/= with one surety of like amount, and in the alternative he may be released on cash bail of Kshs.300,000/-

**SIGNED DATED and DELIVERED** in open court this **25<sup>th</sup>** day of **April 2013**.

**L. A. ACHODE**

**JUDGE**