

REPUBLIC OF KENYA

High Court at Machakos

Criminal Appeal 163 of 2012

NZAMBI JOHNAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Mutomo Senior Resident Magistrate's Court Criminal Case No. 185/2012 by Hon. S.A. Ogot, R.M on 12/10/2012)

RULING

The application dated 15th November, 2012 by the applicant herein is for bail pending appeal. It is premised on grounds that her appeal against conviction and sentence has an overwhelming chance of success as the conviction was based on insufficient evidence; the appellant will suffer irreparable harm by serving a substantial part of the sentence if the appeal succeeds; justice would demand that she be granted orders sought.

The application is supported by an affidavit sworn by the Applicant whereby she deposed that she was sentenced to serve 13 years imprisonment, she has lodged an appeal against the conviction and sentence and she believes that her appeal is arguable and has high chance of success.

She averred that she has a constitutional right to be released on bail and was willing to comply with any conditions set.

The appellant was convicted of the offence of being in possession of narcotic drugs contrary to section 3(1) (2) (a) of the Narcotic Drugs and Psychotropic Substance Act No. 4 of 1994 and sentenced to serve thirteen (13) years imprisonment.

The application was not opposed by the State. **Mr. Mukofu**, State Counsel conceding to the application noted that the appeal has a high chance of success.

It is important to note that the appellant was initially charged in Criminal Case No. 164/2012 with the offence of being in possession of narcotic drugs. It was alleged that the offence was committed on the 22nd July, 2012. While out on bond, she was arrested on the 27th August, 2012 and charged with a similar offence.

The most important consideration in granting orders sought herein is whether the appeal has overwhelming chances of success, such that there is no justification for depriving the applicant of his/her liberty (see *Dominic Karanja versus Republic [1986] KLR 612*). The court also noted that there may be minor consideration like the existence of exceptional or unusual circumstances.

I have carefully perused the proceedings and judgment of the trial court in both cases. I have also considered the grounds of appeal. It is apparent that the Applicant/Appellant has an arguable case. In the premises I do allow the application. The Applicant shall deposit a cash bail of 200,000/=. The order shall apply in Criminal Appeal No. 164/2012.

DATED, SIGNED and DELIVERED at MACHAKOS this 23RD day of MAY, 2013.

L.N. MUTENDE
JUDGE