

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 91 OF 2013

ISAAC KURIA KAMURIAPPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

1. This application arises out of the conviction of the appellant; Isaac Kuria Kamuri, in 12 counts in **Chief Magistrate Criminal case no. 671 of 2011**, as follows:

- i. In counts no **1, 2, 11** and **12**; for the offence of **stealing by servant** contrary to **section 281** of the **Penal Code**, wherein it had been alleged that he stole the various cheque leaves listed in the said counts, which came into his possession by virtue of his employment as the general manager of JONSAGA TERVERN INN and JOWANGA HOLDINGS LTD respectively.
- ii. In counts no **3, 5, 7** and **9**; for the offence of **forgery** contrary to **section 349** of the **Penal Code**, where in it had been alleged that he forged the various cheques listed in the stated accounts.
- iii. In counts no **4, 6, 8** and **10** for the offence of **uttering a false document** contrary to **section 353** of the **Penal Code**, wherein it had been alleged that with intent to defraud, he uttered the stated cheques, to the various bank employees named in those counts, on diverse dates.

2. Upon conviction the learned trial magistrate sentenced the appellant to a fine of Kshs.50,000/= and in default to serve 8 months imprisonment on each of the twelve counts, on 15th February 2013. The appellant filed an appeal and while it was still pending he brought this application for bail pending appeal. The main thrust of the application is that the pending appeal has overwhelming chances of success for reasons that he was not accorded a fair trial.

3. The learned state counsel Miss Nyaicho, opposing the application on behalf of the state, urged that the evidence of the 17 prosecution witnesses was consistent, and that **PW13** the Document Examiner examined the specimen signatures of both the complainant and the appellant to reach his conclusion. It was also her averment that the evidence against the appellant was cogent.

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. Whilst vide **Section 379** of the **Criminal Procedure Code**, the High Court has the power to grant bail to the applicant, the learned counsel for the applicant has not advanced any reasons why bail should be

granted to him. Without delving into the merits and demerits of the pending appeal, I find that it has not been demonstrated on what basis the pending appeal is said to have overwhelming chances of success, nor that there exists any exceptional or unusual circumstances warranting the exercise of the court's discretion in favour of the applicant.

6. It must be remembered that bail pending appeal is not a constitutional right. Whereas it is true that the offences for which he was charged were bailable, it shall be borne in mind that the applicant no longer enjoys the presumption of innocence, which entitled him to that bail, at the trial stage, since that presumption was lost when he was convicted. Even the previous good character of an applicant or the hardships, if any, facing his family would not be considered exceptional or unusual factors, neither would the applicant's observance of his bond term while on trial. These would not amount to unusual circumstances upon which a court could conclude that it is in the interest of justice to grant the bail sought. In light of the evidence on record and the conviction already in place, and without pre-empting the filed appeal I do not find sufficient grounds to grant the application sought.

For the foregoing reasons, I therefore find that the application before me is lacking in merit and decline to grant it. The application is dismissed.

SIGNED DATED and DELIVERED in open court this 13th day of *June* 2013.

L. A. ACHODE

JUDGE