

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 103 OF 2012

REPUBLIC RESPONDENT

VERSUS

THOMAS MWANZIA MUSILA APPELLANT/APPLICANT

RULING

1. The Appellant, **Thomas Mwanzia Musila**, was convicted on his own plea of guilty for the offence of being in possession of narcotic drugs to wit fourteen (14) rolls of cannabis sativa (bhang) and sentenced to seven (7) years imprisonment on 12/7/2012.
2. In an application dated 27/3/2013, the Applicant applied for bail pending appeal. The application is premised on the grounds that the appeal has overwhelming chances of appeal. The Applicant has averred that he has a fixed place of abode and is willing to abide with the terms of bail/bond. The State is not opposed to the application.
3. I have considered the application. I have also perused the lower court proceedings.
4. The court has the discretion to grant or refuse bail depending on the circumstances of each case. The court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case or pending the hearing of an appeal. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic (1986) KLR 600**. The said principles include the following; the nature of the offence, the strength of the evidence, the character or behavior of an accused and the seriousness of the punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exist which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused will interfere with witnesses if he is released on bond. Whereas the above principles are applicable in regard to applications made by accused persons seeking to be released on bail pending trial, the same principles are applicable when the court is considering whether to release an Appellant pending the hearing of an appeal.
5. Having carefully considered the application herein and the entire record of the lower court, it is apparent the Applicant has an arguable case.
6. I am inclined to grant bail in this case. I order that the Appellant be released on a cash bail of Kshs.50,000/=.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 20th day of September 2013.

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JUDGE