

No. 77/13

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO.69 OF 2013

DUNCAN WAMBUA KIMEUAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Machakos Chief Magistrate's Court, Criminal Case No. 141/2011 by J. Omenge, SPM on 27/4/2012)

RULING

1. **Duncan Wambua Kimeu** hereinafter "*the applicant*" was charged, tried, convicted for the offence of stealing a motor vehicle contrary to section 278 (a) of the Penal Code. He was sentenced to five (5) years imprisonment.
2. Being aggrieved, he appealed against the conviction and sentence. He now seeks to be released on bail pending appeal. The application is premised on grounds that the appeal has overwhelming chances of success which call for release of the applicant lest he serves the whole or substantial part of the sentence.
3. Counsel for the applicant, **Mr. Makundi** submitted that the application met the criteria of granting an application of that nature. The appeal has an overwhelming chance of success because theft had not been demonstrated. The applicant having served one (1) out of the five (5) years imprisonment, he sought his release on bail.
4. The application was opposed. **Mr. Mwangi**, the learned State Counsel, guided by the authority of ***Dominic Karanja versus Republic KLR 612***, argued that the appeal had no chance of succeeding. He alluded to the evidence adduced as to ownership of the motor vehicle and the intent to commit the offence. On the issue of whether the Applicant will have served a substantial part of the sentence prior to the appeal being heard, he argued that the term of sentence served so far was not substantial.
5. Pursuant to the principles laid down in the ***Dominic Karanja*** case cited, it must be established that the appeal has overwhelming chance of success such that there is no justification for depriving the applicant liberty.
6. Having duly perused the Lower Court proceedings, I hereby restrain myself from delving in details of the appeal to be argued. I however, take into consideration the sentence imposed. By the time the appeal is concluded the applicant may have served a substantial part of the sentence. In the premises, justice would call for allowing of the application.
7. I therefore allow the application as sought. The applicant shall be released on a cash bail of **Kshs 400,000/=**.
8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 10TH day of SEPTEMBER, 2013.

L.N. MUTENDE

JUDGE