



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL APPEAL NO.171 OF 2013

CLEOPHAS MWALUKO ALOIS APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

***(Being an appeal from the original conviction and sentence in Machakos Chief Magistrate's Court,
Criminal Case No. 805/2013 by Hon. P.N. Gesora, SPM on 22/7/2013)***

RULING

1. **Cleophas Mwaluko Alois** was charged in Machakos Chief Magistrate's Court Criminal Case No. 805 of 2013 with four (4) counts of stealing contrary to section 275 of the Penal Code and two (2) alternative charges of handling stolen property contrary to section 322 (2) of the Penal Code.
2. He was convicted on his own plea of guilty on all the four (4) counts of stealing and sentenced to serve one (1) year imprisonment on each of the sentences, to run consecutively.
3. Being aggrieved by the conviction and sentence passed he has lodged an appeal against the conviction and sentence.
4. He now seeks to be released on bail pending the hearing and determination of the appeal. His application dated 29th August, 2013 is based on grounds that he is a secondary school student who was in form 3 at the time for his arrest. His conviction and sentence imposed will therefore disrupt his education. It would therefore be in the interest of justice for him to be released on bail pending appeal. The application is also supported by an affidavit sworn by the applicant in which he reiterates the grounds in support of the application and adds that he is ready to avail himself for trial in accordance with conditions to be set by the court. He also avers that his mother **Anastacia Mwikali Alois** is willing to support him in ensuring he attends court.
5. **Mr Kaluu**, counsel for the applicant submitted that the appeal filed had an overwhelming chance of success (*the applicant is a minor*) and since the applicants learning programme has been disrupted it was in the interest of justice that the order sought be granted. Further, he also submitted that by the time the appeal is concluded the applicant will have served a substantial part of sentence.
6. The learned Counsel, **Mr. Mwangi** for the State did not oppose the application. He pointed out that although the application did not satisfy the condition of the appeal having an overwhelming chance of success and there is evidence that the applicant is a habitual thief having stolen from the mother, the complainant herein, there is unusual and special circumstance, the fact that the

- applicant is a school going youth.
7. I have perused the Lower Courts record. The complainant in three of the counts is the accused's mother per what is revealed in the Probation Officers report. Looking at the particulars of the offence, items stolen range between the values of Kshs. 2000/= – 5200/=. There is an allegation that the applicant is a minor, the Lower Court on its motion directed that the accused person's age be assessed. This was not done. At the time of imposing the sentence he relied on a report filed by the Probation Officer which indicates that the accused is 18 years old. The Probation Officer recommended that the applicant be sentenced to a non- custodial sentence in order for him to continue with his education. The fact that he is a student at Katheka Secondary School is established. The court acted contrary to the recommendation of the Probation Officer on the basis that the applicant was a truant.
 8. I agree with the State Counsel that there are special circumstances that call upon this court to ensure justice is done. In the premises, I grant the applicant bail pending appeal. He may be released on bond of **Kshs. 100,000/=** with a surety in a like sum.
 9. It is so ordered.

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

L.N. MUTENDE

JUDGE