



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 206 OF 2012

JUDITH MUTANU STEPHENAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. This is a Notice of Motion dated 19th April 2012, brought under **Section 357** of the **Criminal Procedure Code**. The applicant, **Judith Mutanu Stephen** seeks to be admitted to bail pending the hearing of appeal **No. 199 of 2012** that she has filed in the High Court. The appeal stems from a conviction in **CM Cr. Case No. 2053 of 2008** by M/s. Nyambura, the Senior Principal Magistrate Nairobi (as she then was). In the said **CM Cr. Case No. 2053 of 2008**, the applicant was tried and convicted for the offence of stealing contrary to **Section 275** of the **Penal Code**, and sentenced to serve three years imprisonment.
2. Mr. Thuita the learned counsel for the applicant, submitted that the applicant's appeal had overwhelming chances of success, for the reason that in finding that the applicant facilitated the diversion of cheques from the complainant's company, the learned trial magistrate was engaging in conjecture that lowered the standard of proof in a criminal case.
3. This alone, it was argued, was sufficient to result in the quashing of conviction when the intended appeal comes up for determination, especially in view of the fact that some of the cheques disappeared while the applicant was on leave.
4. The principle consideration in an application for bail pending appeal is, the existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail. If 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, conditions of granting bail will exist. What is to be considered are the particular circumstances and weight and relevance of the points to be argued. - See the case of **Jivraj Shah vs. Republic [1986] LLR 605**.
5. In exercising its discretion, the court has to bear in mind that when the applicant was convicted by

a competent court she lost the presumption of innocence conferred on her by the Constitution and that during the hearing of the pending appeal the burden will be upon her to show the court that the conviction was wrong. - See the case of **Isaack Tulicha Guyo vs. Republic, Court of Appeal, Nairobi Criminal Appeal No. 16 of 2010;**

6. I have perused the evidence and judgment from which the intended appeal emanates as well as the submissions from the applicant and the respondent. Without delving into the merits and demerits of the appeal, I am not persuaded that the applicant has demonstrated that her appeal has overwhelming chances of success. Neither do I discern any exceptional or unusual circumstances upon which I can conclude that it is in the interest of justice to grant the bail sought.
7. Mr. Thuita contended for the applicant that the birth of her baby in July 2012, who is now being raised in prison, together with the applicant's own health condition, are exceptional circumstances entitling her to be admitted to bail pending appeal.
8. It was averred further that she does not pose any danger to the public and if released on bail, she would duly attend court as she did during the trial where she had been put on bond terms of Kshs.200,000/- with a surety of similar amount. The court was also told that the applicant is ready to abide by any order of this court as regards the bail, and that the granting of the order sought will not prejudice any party in this case.
9. In the case of **Dominic Karanja v Republic [1986] KLR pg. 612,** the Court of Appeal stated that a solemn assertion by an applicant that she will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal. The previous good character of the applicant and the hardships, if any, facing her family were not exceptional or unusual factors either. The intended appeal must in itself be shown to have overwhelming chances of success.

For those reasons and without appearing to determine the merits and demerits of the application, I dismiss it.

SIGNED DATED and DELIVERED in open court this 31st day of October 2013.

L. A. ACHODE

JUDGE