



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO. 286 OF 2013**

**STEPHEN NJUGUNA KING'ARA .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

1. The Applicant herein was convicted and sentenced to serve six months imprisonment for the offence of being in possession of **Government Stores**, contrary to **Section 324(3)** of the **Government Stores Act Cap 63 Laws of Kenya**. This was on 28<sup>th</sup> August 2013. Being dissatisfied with the said conviction and sentence the appellant filed petition of appeals. On 10<sup>th</sup> September 2013 which was registered as **Cr. App No. 154 of 2013**.
2. The grounds of the appeal are that the learned trial magistrate erred in law and fact in entering a plea of guilty and convicting the applicant when his explanation did not support the plea. He also complained that the trial court ignored his mitigation and found that the prosecution had proved their case to the required standard and finally that the sentence imposed against him was excessive and unreasonable.
3. While the appeal was still pending the applicant brought an application by way of Notice of Motion under **Section 357 Criminal Procedure Code**, in which he prayed to be admitted to bail/bond pending hearing and determination of the said appeal. The grounds as carried on the face of the application are that the said application has high chances of success and that by the time the appeal is heard and determined the applicant will have served the sentence, thereby rendering the determination of appeal a purely academic exercise. In any case it is argued that the applicant was on bail during the trial in the lower court.
4. Learned counsel Mr. Njiraini argued the application on behalf of the applicant while M/s. Maina learned state counsel opposed it on behalf of the state.
5. I am aware of the law as is to be found in **Section 348** of the **Criminal Procedure Code** which states that:

**“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”**

6. This only applies where the plea from which the conviction and sentence arose was unequivocal. In the case before me Mr. Njiraini for the applicant argued that the plea in the lower court was not unequivocal by reason of the applicant’s mental illness. To support his argument Mr. Njiraini submitted an out-patient confirmation sheet from the Ministry of Public Health and Sanitation as proof that the applicant was attended to at Gilgil General Hospital on account of mental illness.
7. Miss Maina opposed the application urging that the plea was unequivocal, as both the charge and the facts were read to the applicant and he admitted the plea and stated that the facts were correct. That therefore, the appeal has no chances of success and in any case the applicant has only a short while left to serve.
8. I have considered the submission from both sides and note that the brief medical report confirms that the applicant attended hospital from April 2011 to April 2013 when he defaulted. During that period he was diagnosed with schizophrenia. That being the case and without appearing to pre-empt the appeal, it is my humble view that his appeal may have chances of success. Given the brevity of the period to be served in prison, it is also likely that the sentence may be served before the appeal is heard and determined, thereby rendering the appeal nugatory.

For the foregoing reasons the application for bail pending appeal is hereby allowed.

**SIGNED DATED and DELIVERED in open court this 28<sup>th</sup> day of November 2013.**

**L. A. ACHODE**

**JUDGE**