



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS CRIMINAL APPLICATION 632 OF 2011**

**SAMUEL KIBET.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

- 1. Samuel Kibet** the applicant before me was tried and convicted by a principal magistrate at Nairobi law courts on six counts, under **Sections 357(a), 353, 322(2) and 313** of the **Penal Code** respectively. He was sentenced to one year in jail on each of the six counts which were ordered to run concurrently.
- 2.** The applicant has appealed to the High Court and his appeal is pending determination. Meanwhile the applicant has lodged in court the present motion by way of Chamber Summons brought under Section 357 of the Criminal Procedure Code.
- 3.** He is asking the court to release him on bail pending the hearing of his appeal. The application is predicated on grounds that the offences for which he was convicted and sentenced are bailable, and that if bail is not granted the appellant might serve the entire sentence or a substantial part thereof before he is heard. The applicant further states that he is the sole bread winner of his family and incarceration has jeopardized the prospects of his school going children and his sole proprietorship optician business.
- 4.** Mr. Githuka learned counsel for the applicant, told the court in submission that there was no evidence tendered from the Kenya Revenue Authority that they did not issue the PIN that the appellant was said to have made, nor that the PIN uttered was false. One witness Mr. Jeremiah Agira had confirmed in evidence that the PIN belonged to him as did the ID card which was the subject matter of count No. 3.
- 5.** Mr. Githuka also submitted that none of the witnesses from the Finger Print Bureau confirmed whether the ID card produced in evidence was genuine or not. He also pointed out that the applicant handed over the relevant documents to PW2 who purchased the motor vehicle in question, at the police station in Kericho in the office of the DCIO. That the applicant would not have done so had he known that they were forgeries or had he himself harboured the intentions to defraud.
- 6.** The applicant's advocate told the court that there was no evidence that the motor vehicle in evidence was stolen. More pertinent was the fact that there was a copy of ID card issued to one Peter Wainaina which the applicant said Mr. Wainaina gave to him when he brought the car to the applicant to sell.
- 7.** Police looked for Mr. Wainaina in Thika where he was said to hail from but did not find him. I note that learned counsel Mr. Mulati for the respondent conceded the appeal on the ground of the existence of Mr. Wainaina whom the police attempted to find but whom they did not find hence the charging of the applicant.
- 8.** Having perused the submissions of the counsel for the applicant and those of the counsel for the respondent and without delving into the merits and demerits of the appeal at this stage I find that the applicant has an arguable appeal, with a chance of success.
- 9.** I also agree that he may end up serving a substantial amount of the sentence if not all of it by the time the appeal is heard. Since the consideration in releasing an applicant on bail pending appeal is whether they will avail themselves during the hearing. I note that he attended court dutifully during the

trial while he was out on bond.

**10.** I therefore grant the application sought.

**SIGNED DATED** and **DELIVERED** in open court this **8<sup>TH</sup>** day of **FEBRUARY, 2012.**

**L. A. ACHODE**  
**JUDGE**