

REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Criminal Miscellaneous Application 66 of 2013

EDIN NURROW MOHAMUDAPPLICANT

VERSUS

REPUBLIC OF KENYARESPONDENT

RULING

The applicant was convicted of the offence of breaking into a go- down and committing a felony contrary to Section 306 (a) of the Penal code and sentenced to five years imprisonment. Before me is an application for bail pending appeal filed by the applicant by way of Notice of Motion supported by the grounds appearing on the face of the application an affidavit sworn by the applicant.

Upon directions given by the court the applicant filed written submissions but there was no reply by the republic. The record shows that the learned counsel for the republic was served with the said submissions and upon perusal submitted that if the basic complaint by the applicant is breach of procedure and in particular non-compliance with Section 211 of the Criminal Code, then they needed not reply.

On my part, I have gone through the record before the resting with the judgment of the learned trial magistrate. Having done so, I have formed the view that there is an arguable appeal with a probability of success even if a retrial were to be sought by the prosecution. Having so observed, I find that the application succeeds and that the applicant shall be released on bail as prayed in his application. Accordingly the applicant shall be released on executing a bond of Kshs. 500,000/= with one surety of equal sum or by depositing cash bail of Kshs. 200,000/=. He shall also deposit his passport with the court.

Orders accordingly.

SIGNED DATED and DELIVERED in open court this 18th day of March, 2012.

**A.MBOGHOLI MSAGHA
JUDGE**