



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 57 OF 2012

NIMAO HASSAN ADULLAHI *alias*

AMINO HUSSEIN HARUNAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant **Nimao Hassan Abdulahi** alias **Amino Hussein Harun** was charged and convicted on her own plea for guilty, for the offence of knowingly possessing and using a forged passport contrary to Section 54(1) (c) of the **Kenya Citizenship and Immigration Act 2011** in count 1 and with being unlawfully present in Kenya contrary to **Section 53 (i)(j)** of the same act. She was sentenced to a fine of Kshs.500,000/- in default to serve twelve months imprisonment in count I, and to a fine of Kshs.100,000/- in default to serve six months imprisonment in count II.

2. The applicant filed appeal No. 12 of 2012, and while it is pending she has filed this application under Section 356 and Section 357 Criminal Procedure Code. The application is based on grounds that the applicant was sentenced to serve a term of 18 months imprisonment in default of payment of a fine of Kshs.600,000/=. That the applicant is willing to abide by such terms, and conditions if bail as the court deems appropriate for her due appearance at the hearing of her appeal.

3. In his submissions in court, the learned counsel for the appellant, Mr. Wamalwa urged on four grounds. First, the learned counsel urged that there was no interpretation into Kisomali language and therefore his client, who understands neither English nor Kiswahili was prejudiced. Second, that the appellant is a juvenile and should not have been tried as an adult.

4. Third, that she was presented in court after two days from the date of arrest instead of the 24 hours provided by law. Lastly that the fine imposed was exorbitant.

5. The principles to be considered in an application for bail or bond pending appeal are now settled. In the case of **Dominic Karanja v Republic [1986] KLR pg. 612**, the Court of Appeal held that:

1. **The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.**

2. **The previous good character of the applicant and the hardships, if any, facing his family were**

not exceptional or unusual factors.

6. I have perused the grounds of the application and the submissions from both learned counsels in this matter. Mr. Mulati is correct in stating that the applicant has not advanced reasons why she seeks to prosecute her appeal while out on bail, nor has he attached the said appeal to her application.

7. **Section 375 Criminal Procedure Code** under which he has come provides in part that:

“After the entering of an appeal by a person entitled to appeal, the High Court or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of his sentence or order appealed against shall be suspended pending the hearing of his appeal.”

The section therefore, foresees the entering of the appeal before the provisions of **Section 357 Criminal Procedure Code** can be invoked. There is no evidence that such an appeal has been entered besides the word of learned counsel. I therefore have no copy of the intended appeal before me from which I may discern that the appellant’s appeal has an overwhelming chance of success.

8. On the issue of age and in the interest of justice I order that the appellant be subjected to age assessment.

SIGNED DATED and **DELIVERED** in open court this **26th** day of **April 2012**.

L. A. ACHODE
JUDGE