



George Githuku Kamau V Republic

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
Miscellaneous Criminal Application No. 76 Of 2012

GEORGE GITHUKU KAMAU.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant has brought this Chamber Summons dated 8th February 2012, under **Section 357** of the **Criminal Procedure Code**. In the application the applicant seeks orders of court admitting him to bail/bond pending the hearing and determination of **Criminal Appeal No. 27 of 2012**.
2. The grounds of appeal may be compressed into 3 grounds as follows:

First, that the intended appeal has overwhelming chances of success. Mr. Kuloba learned counsel for the applicant urging on this point, submitted that the applicant was charged under **Section 281** of the **Penal Code**. That none of the witnesses who testified saw the applicant steal, take or withdraw the money which was the subject matter of the charge. That, infact, the stolen cash was not traced to the applicant, and the witnesses testified that they did not know to whom the cash was transferred, nor the person who withdraw it.
3. The Second ground was that the applicant was out and on bail during his trial, and that he observed the conditions of bail and did not abscond.
4. The third ground was that the applicant might serve a substantial part of his sentence, or most thereof, rendering the appeal nugatory if he is not admitted to bail pending the hearing and determination of his appeal.
5. The learned state counsel Miss Lewa, opposing the application on behalf of the state, urged that the filed appeal showed no likelihood of success since the prosecution case was proved beyond reasonable doubt, against the applicant.

6. The learned state counsel gave a brief summary of the evidence on record, in which she pointed out that **PW2** the Finance and Administration Manager of Thika Institute of Technology noticed from their bank statement, the unauthorised debit of Kshs.962,127/= from the institute's accounts. He instructed the bank to reverse it. **PW3**, the Operations Manager and **PW4**, both confirmed that the transaction that debited the Institute's account with the Kshs.962,127/=, was performed under User ID GK00925, belonging to George Githuku Kamau the applicant herein. The money was transferred to the account of one Yvone Muthoni Ngamani.

7. In the opinion of the learned state counsel the court is currently dealing with appeals expeditiously, and there should be no fear of the applicant serving sentence. Further that no reasons had been advanced to move the court to exercise its discretionary powers in favour of the applicant.

8. 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.**

I have perused the evidence and judgment on record, as well as the submissions from the appellant and the respondent. Without delving into the merits and demerits of the appeal, I am not persuaded that the appellant has demonstrated that his 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.

9. For the foregoing reasons, I therefore find that the application before me is lacking in merit and decline to grant it. The application is dismissed.

SIGNED DATED and **DELIVERED** in open court this **2nd** day of **May** 2012.

L. A. ACHODE

JUDGE