



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Criminal Appeal 230 of 2012**

**JOSEPH MATHAIYA MWAI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Joseph Mathaiya Mwai, the applicant herein was charged with the offence of stealing contrary to **Section 275** of the **Penal Code** and in the alternative, handling stolen goods contrary to **Section 322(2)** of the **Penal Code**. He was convicted by Nyahururu court on 28/11/2012, and was sentenced to serve one year imprisonment without the option of fine. He has moved this court by application dated 19/12/2012, seeking to be released on bond pending appeal.

The applicant has filed an appeal dated 19/12/2012 and claims that the appeal has high chances of success because the evidence on record did not support the conviction; his alibi was not displaced; he is 73 years old, sickly and considering the fact that the offence is a misdemeanour, he should have been considered for a non custodial sentence. He also claims to have been on bond for over a year during the pendency of the trial and he attended court without fail and will do so if released on bond.

The proceedings of the lower court were exhibited but are not typed and I was not able to read them to establish whether or not the appeal has high chances of success. However, bearing in mind that the offence is a misdemeanour, carries a maximum sentence of three years imprisonment, the applicant was treated as a first offender, he is an old man aged about 73 years, a non custodial sentence should have been considered. I do note that the trial magistrate considered the fact that the offence is rampant in the area but a severe non custodial sentence could have been considered. In the end, I am persuaded that the applicant is deserving of the order sought. The applicant may be released on cash bail of Kshs.50,000/-. He must attend court as required by the court otherwise the cash bail will be forfeited to the state. It is so ordered.

**DATED and DELIVERED this 20<sup>th</sup> day of December, 2012.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

Mr. Wahome Ndegwa for the appellant

The appellant present

Mr. Marete for the State

Kennedy – Court Clerk