



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT BUNGOMA**

**CR. APPL. NO.182 OF 2011**

*(Appeal from the Principal Magistrate Hon. E. Cherono at Webuye Court in Cr. Case No.1553 of 2010)*

**CHARLES MUTETI** ..... **APPLICANT**

~VRS~

**REPUBLIC** ..... **RESPONDENT**

**RULING**

The Applicant was charged at Webuye Principal Magistrate’s Court with breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code and in the alternative handling stolen goods contrary to section 322 (2) of the Penal Code. He was convicted of the later charge and sentenced to serve 7 years in jail. He was aggrieved by the conviction and sentence and preferred an appeal. He now requests to be released on bail pending the outcome of the appeal. The application was opposed by Mrs Leting for the State.

The evidence on which the Applicant was convicted was that during the night of 7<sup>th</sup>/8<sup>th</sup> December 2010, unknown people broke into the office of Restoration Evangelistic Church Ministries at Webuye town in Bungoma County and stole from therein music equipment worth Ksh.500,000/=. On 13/12/2010 the Applicant was found with some of the equipment and this was in the same area. In sworn defence, the Applicant denied having been found with the items. The prosecution case was believed and he was convicted.

The Applicant is a convicted and sentenced person. There is the presumption that he was properly convicted and sentenced. He is therefore not entitled to bond. For him to be released on bond pending the disposal of his appeal he has to demonstrate that the appeal has overwhelming chances of success. **(Dominic Karanja v Republic [1986] KLR 612).**

In support of this application, the Applicant claimed he was not accorded a fair trial, the trial took a very long time to finalize and that the sentence meted to him was excessive. In the Petition of Appeal, he complained that both the presiding officer and the complainant attend the same church whose office was broken into. He alleged that his alibi defence was not considered. I have perused the record and considered these matters along with the opposition to the application by Mrs Leting for the State. I am unable to find that the appeal has overwhelming chances of success, or that the application presents any exceptional circumstances. I decline to release the Applicant on bail.

Dated and delivered at Bungoma this 24<sup>th</sup> day of January, 2011 in the presence the Applicant and

State Counsel Mrs. Leting and Lilian Gimose the court clerk.

**A. O. MUCHELULE**  
**JUDGE**