



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

(Coram: Ojwang, J.)

CRIMINAL APPEAL NO. 439 OF 2010

JESSE MANTUA KARUMA.....APPELLANT/APPLICANT

- VERSUS -

REPUBLIC.....RESPONDENT

RULING

The appellant moved this Court by Notice of Motion dated **14th October, 2010** and brought under s. 357 of the Criminal Procedure Code (Cap. 75, Laws of Kenya). The application carries one substantive prayer:
that this Court be pleased to make an order releasing the appellant/applicant and admitting him to bail, on such terms as the Court may deem just and reasonable.

Learned counsel, **Mr. Were**, who represented the applicant, based his submissions on his own affidavit sworn on **14th October, 2010** in support of the application.

The applicant was, on **28th September, 2010** convicted in Criminal Case No. 3381 of 2008 at the Court of the Mombasa Senior Principal Magistrate; he was committed to jail for a period of 10 years. Immediately upon sentence being pronounced, the applicant's counsel then having the conduct of the matter, sought certified copies of the proceedings, for the purpose of lodging an appeal.

The deponent "*confirmed from the High Court Criminal Registry that the hearing of the appellant's appeal will not take place soon*": and so there was a proper basis for seeking bond pending appeal — a case that was all the stronger, as "*the appellant was granted bond in the lower Court and [he] never absconded*". The deponent exhibited lower Court papers showing that the appellant had been granted a Kshs. 200,000/= bond with surety — and that the recognizance held by the Court in that case remains lodged in Court.

Learned counsel submitted that the applicant's appeal had been lodged in good time; and that it stood "*overwhelming chances of success*".

For the respondent, learned counsel, **Mr. Onserio**, raised no objection — especially considering that the applicant had been freed on bond, during the pendency of trial.

I have considered the merits of this case, especially on the basis of its history, and of the submissions made by counsel on both sides. A decisive point favouring the application, is that the appellant had undergone trial while on bond, and by the bond terms, a recognizance had been lodged in Court and still remains lodged there.

I will order as follows:

- (1) The applicant shall be released forthwith, on bond.**

 - (2) The bond which had been ordered and secured by the trial Court, in Criminal Case No. 3381 of 2008, shall be retained, and is the basis on which the applicant is now released from custody.**

 - (3) The applicant shall dutifully attend before the Court as may from time to time be required, until the appeal is heard and determined.**
- Orders accordingly.**

DATED and DELIVERED at MOMBASA this 15th day of February, 2011.

J. B. OJWANG

JUDGE

Coram: *Ojwang, J.*

Court Clerk: *Ibrahim*

For the Appellant/Applicant: **Mr. Were**

For the Respondent: *Mr. Onserio*