



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL APPEAL NO. 5 OF 2011

W.K APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction of the Principal Magistrate at Sotik, Hon. S.R. Rotich and Sentence of the District Magistrate

at Sotik Hon. J.Kasam (Miss)given in Sotik PM CR. C. NO. 1010 of 2010)

RULING

W. K, the Appellant in this appeal, was sentenced to 8 months in a juvenile home on 27th May, 2010 following his conviction on the offence of theft of assorted clothes valued at Shs. 3,000/= from Eunice Bii on 29th April, 2010. The Appellant is said to be a pupil in Class 8 in C Primary School and is due for registration as a KCPE candidate.

In his application made by way of Notice of Motion dated 1st March, 2011, supported by an affidavit sworn on that date by P.C.K who is the current Head teacher of C Primary School, the Appellant is said to be in custody of his maternal uncle, one W.K as he is a child of a single mother. Unless he registered as a KCPE candidate, it is averred that his chances of sitting the examination that will open way for him to proceed to high school shall be ruined. His appeal is said to have overwhelming chances of success.

When the application for bail pending appeal came up for hearing, Mrs. Bett, the learned counsel for the Appellant, urged the court to admit the Appellant to bail on the grounds that the appeal has overwhelming chances of success and that the Appellant is a minor who is entitled under **Article 50(2) (p) (q)** and **Article 53(1) (c) & (f)**, to the constitutional right to bail.

Miss N.M. Idagwa, the learned State Counsel who is seized of the brief did not oppose the Appellant's application for bail pending appeal.

I have perused the application and the affidavit of Patrick Cheruiyot Keter and considered the submissions made by Mrs. Bett. The Appellant is entitled to appeal against conviction and sentence, as he has done, as this is a right under **Article 50(2) (q)** of the Constitution. Under **Article 51(1)** of the Constitution, a person who is imprisoned retains all the rights and fundamental freedoms in the Bill of Rights except to the extent to which any particular right or fundamental freedom may clearly be incompatible with imprisonment. The imprisonment of the Appellant was for 8 months in a juvenile home. It did not violate the Appellant's rights and fundamental freedoms. The sentence, on the face of it, does not also appear manifestly excessive notwithstanding that the Appellant is a minor considering that the offence of theft under **Section 275** under which the Appellant was convicted carries a maximum sentence of three (3) years imprisonment. It does not appear that any of the rights of the Appellant under the Constitution were violated either in his prosecution or in his conviction or sentence. However, having regard to the fact that the Appellant, a minor, has on the face of it, overwhelming chances of success in his appeal, it is desirable that he be admitted to bail pending appeal. After weighing one thing with another, and considering that there is no evidence that the Appellant will not attend the hearing of his appeal which has overwhelming chances of success, I allow the application which is conceded by the State and admit the Appellant to bail pending appeal on the terms that he furnishes one surety of Shs. 50,000/= and signs a bond of similar amount. It is so ordered.

DATED at KERICHO this 8th day of March, 2011

G.B.M. KARIUKI, sc

RESIDENT JUDGE

COUNSEL APPEARING

Mrs. Bett Advocate for the Appellant
Mr. N.M. Idagwa State Counsel for the Respondent
Court Clerk – Mr. Bett