



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 5 OF 2011

ZULFIKAR ALIAS SIDIQUE

ABDUL.....APPLICANT

VERSUS

REPUBLIC.....RESPONDE

NT

R U L I N G

The applicant, ZULFIKAR ALIAS SIDIQUE ABDUL was convicted on three counts as follows:

- (a) *Stealing a motor vehicle contrary to Section 278 (a) of the Penal Code;***
- (b) *Making a Document without authority contrary to Section 357 (a) of the Penal Code; and***
- (c) *Obtaining money by false pretences contrary to Section 313 of the Penal code.***

He was then sentenced to imprisonment for 2 years for the offence of stealing a motor vehicle; and for one (1) year each for the offences of making a document without authority and for obtaining money by false pretences.

The applicant has lodged an appeal with the High Court. And whilst waiting for the hearing and determination of the appeal, he has now applied to this court for bail pending appeal.

When the application came up for hearing, Miss Maina, learned State Counsel conceded the same. It was her view that the offence of making a document without authority was not proved as the document examiner did not testify.

The learned State Counsel also expressed the view that the applicant was not sufficiently linked to the Agreement which **PW 4** produced in an attempt to demonstrate that the applicant had given to him the vehicle in question as a security for a loan which **PW 4** gave to the applicant.

Lastly, the respondent conceded the applicant's submission that there were inconsistencies about the evidence of the Registration particulars of the vehicle allegedly stolen by the Applicant.

Although I am not required nor expected to make any definite findings on the issues which the applicant intends to canvass during his appeal, I nonetheless find some merit in the submissions pertaining to the offences of stealing a motor vehicle, and of making a document without authority. However, I will say no more for now, so that I do not make the mistake of tying-up the hands of the Judge who will ultimately hear and determine the appeal.

However, in relation to the offence of obtaining money by false pretences, I do not think that the conviction would stand or fall on the strength of the documentary evidence alone. **PW 4** and the applicant had known each other for some time. It is thus conceivable that the appellate court may or may not uphold the conviction on the basis of the oral testimony tendered by those two persons, regarding the loan which **PW 4** allegedly gave to the applicant.

At best, I would say that the appeal in that respect was arguable.

Meanwhile, the maximum length of time that the applicant can stay in prison is 2 years. Therefore, there is a real possibility that the applicant may either finish serving the whole sentence or may serve a substantial portion thereof before the appeal is heard and determined.

If that were to happen, and then the appeal was allowed, the success of the appeal would be completely hollow.

For those reasons I do allow the application. The applicant shall be released pending the hearing and determination of his appeal on condition that he deposits a sum of Kshs.400,000/= in court. It is so ordered.

Dated, Signed and Delivered at Nairobi this 25th day of May, 2011.

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FRED A. OCHIENG

JUDGE