



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HCCRA NO. 107 OF 2011**

**LESIT J.**

**JOANINA KATHURE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(From the original conviction and sentence of MAUA Senior Resident Magistrate Hon. Mr. R Mukungu)*

**RULING**

The applicant JOANINA KATHURE was convicted by Maua Court for two counts of assault causing actual bodily harm contrary to section 251 of the PC she was sentenced to 2 years imprisonment in each count. She had filed her appeal and simultaneously Notice of Motion seeking bail pending the hearing and determination of the appeal.

The grounds for the application are cited on the face of the application as follows:-

- (a) The appellant/applicant has lodged an appeal that has extremely good chances of success.
- (b) The appellant/applicant is serving a two year jail term.
- (c) The trial court erred in failing to call for a probation officers report before sentencing the appellant/applicant.
- (d) The trial court wrongfully exercised its discretion in failing to give the appellant/applicant an option of a fine on the extraneous grounds that the appellant/applicant is poor woman.
- (e) Appellant/applicant is not a flight risk.
- (f) The appellant/applicants appeal would be rendered nugatory if she is not admitted to bail.

Mr. Mbogo urged the application on behalf of the applicant. He urged that he was relying on the

supporting affidavit and grounds on face of the application counsel urged that the learned trial magistrate indicated that she would not give the applicant an option of jail because she is too poor.

Mr. Mbogo submitted that the appellant was an orphan. That her child of 6 years was left in the care of a good Samaritan.

Mr. Kariuki learned counsel for the state does not oppose the application. Counsel urged that the conviction was lawful. However, we urged that the state was not opposed to the applicant being granted bail.

I have considered the application. The hardships of the family of an applicant is not per-se a good ground to grant bail pending appeal. However, the fact applicant is an orphan, that her child was left in the streets with no family to take care of her is a matter the court should consider along other grounds.

I have considered the proceedings and judgment of the lower court against the grounds of appeal, the affidavit in support of the application together with submissions by the advocate for the applicant and the state. I am of the view that the applicants appeal especially against sentence is likely to succeed. For these reasons I will allow the application and grant the applicant bond of Ksh.20,000/- with one surety of like sum to be approved by the Deputy Registrar of this court.

**Dated signed and delivered this 28<sup>th</sup> day of July 2011.**

**LESIIT, J**

**JUDGE**