



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

**AT EMBU**

**CRIMINAL APPEAL NO. 106 OF 2011**

**RAEL WERUMA .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

The Applicant was the 1<sup>st</sup> accused before the District Magistrate II at Runyenjes. The record shows that she was convicted on her own plea of guilty on the charge of malicious damage to property contrary to section 339(1) of the Penal Code and was sentenced to serve 18 months in jail and to pay compensation of Kshs.20,000/= to the complainant whose house she had demolished. The value of the house was Kshs.30,000/=. The Applicant appealed against the conviction and sentence and, pending the resolution of the appeal, sought to be released on bail. In the Petition of Appeal

she alleged that she was sickly at the time plea was taken and did not know or appreciate the seriousness of the matter. Regarding sentence, she pleads that she is an elderly woman of 62 years who is hypertensive who should have received a light sentence.

There is a presumption against the Applicant that she was properly convicted and sentenced. If she seeks to be released on bail at this stage, she has to show that the appeal has overwhelming chances of success. (**DOMINIC KARANJA –VS- REPUBLIC [1986] KLR 612**). She has to show that there are all the chances that the appellate court will quash the conviction, or at least interfere with the sentence to the extent of preferring a non-custodial penalty. The court should make that assumption while at the same time realizing that it is not hearing the appeal and should therefore not compromise the power of that court or prejudice the rights of any of the parties.

The facts as disclosed by the case are that the complainant was the Applicant's daughter-in-law. The Applicant destroyed the house to force her to vacate the same. The two were therefore in a permanent relationship. The Applicant was a first offender who pleaded guilty. In mitigation she said the complainant had abused her.

I find, and agree with Mr. Wohoro for the State, that the Appeal has overwhelming chances of success. The Applicant is admitted to bail. She will deposit cash bail of Kshs.20,000/= and be produced before the Deputy Registrar who shall set her mention time table.

**Dated, Signed and delivered at Embu this 25<sup>th</sup> day of July 2011.**

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