



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL APPEAL NO. 99 OF 2011

BETWEEN

WILSON MUREI KOSGEI:.....:APPELLANT

AND

REPUBLIC:.....:RESPONDENT

(Being an appeal from the decision of the Principal Magistrate Hon. D.K. Kemei dated 3rd June, 2011 at Eldoret Chief Magistrate's Court Criminal Case No. 1971 of 2011)

RULING

This is an application for bail pending appeal. It is by **Wilson M. Kosgei** who was convicted of the offence of stealing by servant contrary to section 281 of the Penal Code. He was sentenced to serve three (3) years imprisonment by **Hon. D.K. Kemei** (PM) in Eldoret Chief Magistrate's Court Criminal Case No. 1971 of 2011.

The application is based on the grounds that the appeal has high chances of success; that the appeal may take long before it is determined and that the appellant's continued detention is adversely affecting his children's health.

The application is opposed by the Learned Senior Deputy Prosecuting Counsel on the ground that the appeal has no chance of success. Learned Counsel however, intimated that he would not support the sentence of three (3) years which he considered manifestly excessive. Having considered the application and the submissions made before me, I take the following view of the matter. It is settled that bail pending appeal may only be granted in exceptional cases, the primary consideration being whether the appeal has overwhelming chances of success.

The record of the Learned Principal Magistrate shows that the appellant was convicted on his own plea. He did not at the trial and has not now demonstrated exceptional circumstances. The interest of his family does not in my view demonstrate exceptional circumstances. There is therefore no basis for admitting the applicant to bail pending his appeal.

The application is dismissed.

To expedite conclusion of this appeal, I direct that the lower court's record be availed by the Deputy Registrar of this court without delay and the appeal be prepared for hearing with dispatch. For that

purpose, this appeal will be mention within the next two (2) weeks on 27th October, 2011.

It is so ordered.

**DATED AND DELIVERED AT ELDORET
THIS 6TH DAY OF OCTOBER, 2011**

**F. AZANGALALA
JUDGE**

**Read in the presence of:-
The appellant and
Mr. Oluoch for the state.**

**F. AZANGALALA
JUDGE
6TH OCTOBER, 2011**