



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET  
Criminal Appeal 58 of 2010**

**JOSHUA KOMEN ROTICH.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Before court is an application by way of a Notice of Motion stated to be brought under section 357 of the Criminal Procedure Code cap.75 laws of Kenya. It prays that the Applicant be admitted to bail/bond pending appeal. It is brought on the grounds that the appeal has overwhelming chances of success and the Applicant has a very young family, that he is the sole bread winner for. The grounds of appeal are that the charge was incurably defective for charging the Applicant with obtaining on diverse dates, that it was wrong in law to convict an agent for the acts of the principal, that no intention to defraud was established and that the defence evidence as a whole was not considered and finally that the Applicant was handed the maximum sentence for an offence he did not commit.

The state did not oppose the application for the Applicant to be admitted to bail/bond.

I have carefully perused the proceedings and judgment of the trial court and it is clear therefrom that the Appellant accounted to the principal for all the moneys he received. A central witness was not called by the prosecution and the inference to be drawn therefrom is that his evidence would have weakened the prosecution case. The burden of proof appears to have been shifted to the accused and that has no basis in criminal justice. The sentence meted out was the maximum allowable again a principle not the norm in criminal justice. I am in these circumstances fully persuaded that the appeal herein has overwhelming chances of success and in which case it would serve no useful purpose to refuse bail/bond only for the Appellant to be released on appeal. Having so found I hereby admit the Applicant to bond pending appeal. He will be released on a bail of Kshs.60, 000/= with a surety of similar amount.

Orders accordingly.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 16<sup>TH</sup> DAY OF JUNE 2010.**

**P.M.MWILU**  
**JUDGE**

**IN THE PRESENCE OF**

**Gumbo H/B Nyarotso** – Advocate for Appellant/Applicant

**Mr. Kabaka** - Advocate for state

**Andrew Omwenga** - Court Clerk

**P.M.MWILU**  
**JUDGE**

