

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 77 of 2010

FAITH WAMBUI MUTHONI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The Applicant through Muyondi & Co. Advocates seeks to be released on bail pending appeal. She relies on 4 grounds as enumerated on the face of her application. Among these grounds is that her Appeal has very high chances of success. She also states that she is likely to serve a substantial part of her sentence before the Appeal is determined.

She in paragraph 4 of her supporting affidavit also avers that the language used in the trial court was not clearly indicated. I have considered these grounds along with the contents of the 2 affidavits in support of the Application. I have also considered the submission by her learned counsel. The state has conceded the application. I have nonetheless read the record of the trial court. The complainant's evidence reads like fiction from another planet. The court nonetheless appreciates that there are very gullible human beings out there who fall prey to such antics and lose huge sums of money to tricksters. I have no doubt in my mind that the complainant was able to see and clearly identify the person who conned him of the money given the many hours they spent together.

I agree that the legal question as to whether the ingredients of obtaining money by false pretences were proved is a pertinent one. That is an issue to be determined at the hearing of the Appeal. The court will also at that point be faced with the question as to whether the facts proved disclose any other cognate offence. The outcome of the Appeal cannot therefore be said to be a foregone conclusion.

I also note that the Appellant has a similar case pending before another court. I am dissuaded from releasing her on bail pending Appeal. Consequently, I dismiss the application dated 14.6.2010 and order that the applicant continues serving her sentence while she awaits the hearing of her Appeal.

**W. KARANJA
JUDGE**

Delivered, dated and signed at Embu this 23rd day of September 2010.

In presence of:- Mr. Okwaro for Applicant & Ms. Matiru for State.