



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CRIMINAL APPEAL NO.100 OF 2010

RODAH JUMA NANJALA **APPELLANT**

~VRS~

REPUBLIC **RESPONDENT**

RULING

The Appellant Rhoda Juma Wanjala in her application dated 20/9/2010 seeks for orders that:

- a) ***That she be granted bail pending appeal; and;***
- b) ***That the sentence of two (2) years imprisonment be suspended.***

The grounds supporting the application is that the Applicant has three (3) young children aged between 1 ½ and 6 years who need motherly care. The second ground is that the Applicant is sickly and thirdly that her appeal has high chances of success. Mr. Situma presented the application and argued the grounds in support.

The state opposed the application. Mrs. Leting argued that the appeal does not have high chances of success. The Applicant’s husband can take care of the children while the Applicant serves the imprisonment sentence. In prison, the youngest child will get facilities and should stay with the mother as she serves sentence. Medical facilities are available in prison and the Applicant can make use of them as she is already doing.

I have perused the proceedings and the judgment of the lower court. In the case cited by the Applicant **SOMO –VS-REPUBLICNAIROBI HCCA NO.105 OF 1972** the court held that the most important ground is that the appeal has overwhelming chances of success. I am not convinced that in this case the chances are overwhelming. This is after perusing the record of the lower court. The appeal has chances of success but they cannot be referred to as overwhelming. The medical records show that the Applicant was admitted in hospital for two (2) days in august 2010 suffering from minor ailments of pain, fever, headache and nausea. These conditions are treatable in the prison clinic and at Bungoma Hospital or Kakamega District Hospital where she may be referred if need arises.

The Applicant relied on two decided cases. In that of **CHIMAMBHAI –VS- REPUBLIC (NO.2) MOMBASA HCCA NO.156 of 1969** the court held that anticipated delay in hearing the appeal together

with other factors could constitute a good ground for granting bail pending appeal. In the case before me, other factors have been dealt with. The issue of delay will be addressed by giving priority to hearing of this matter especially due to the tender age of the children.

I find no exceptional or unusual circumstances in this application. I decline to grant the orders sought for the foregoing reasons.

Due to the tender age of the children, I hereby admit this appeal and direct that it be fixed for hearing on priority basis.

F. N. MUCHEMI
JUDGE

Judgment dated and delivered at Bungoma this 1st day of November, 2010. In the presence of Mr. Situma for the Applicant and the State Counsel Mrs. Leting.

F. N. MUCHEMI
JUDGE