



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**Criminal Appeal 93 of 2009**

**LUCY KERUBO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

The Applicant was charged before Senior Resident Magistrate Court, Keroka with stealing contrary to **section 275** of the **Penal Code** and was convicted and sentenced to one year imprisonment. The particulars were that on 20<sup>th</sup> October, 2007 at Nairobi Jack and Jill stage within Nairobi Province she stole one alarm siren valued at Kshs. 10,000/- the property of **Sarah Saisi**. She appealed against the conviction and sentence and now requests, under **section 356(1)** of the **Criminal Procedure Code**, for bail pending the appeal. The reasons given for the application are that the appeal raises very serious issues of law and has high chances of success, she has four children who solely depend on her and are likely to suffer, she is in poor health and she unlikely to abscond if released on bail.

In the application, she was represented by **Mr. B. Masese** while prosecution was represented by **Mr. Mutai** who left the matter for the court's decision.

The most important consideration is whether the appeal filed has overwhelming chances of success (**Somo vs. Republic [1972] EA 476**)

The minor relevant consideration is whether there are exceptional or unusual circumstances in the case (**Dominic Karanja vs. Republic [1986] KLR 612**).

Regarding the chances that the appeal may have, **Mr. Masese** complained that the prosecution relied solely on the evidence of the complainant to convict and that the person who allegedly saw the alarm being handed over to the Applicant by the complainant had not been called to testify. In the Petition of Appeal, the Applicant complained that the trial magistrate had failed to consider her mitigation before sentencing her. When considering whether or not the appeal has overwhelming chances of success, the fact that at least the sentence may be interfered with is critical. The Applicant was a first offender and the value of the property stolen was only Kshs.10,000/=. It is usually in very exceptional circumstances that a court would not consider non-custodial sentence for such an offender, given her personal difficulties as indicated above.

The fact that Applicant has children who may suffer because of her detention is not in itself an exceptional or unusual circumstance, nor is the fact that she is in poor health. I will say the same regarding her statement that she will not abscond if released on bail.

However, considering the totality of the circumstances that the application presents, I admit the Applicant to bail pending her appeal. She will deposit cash bail of Kshs.10,000/= as a condition for her release.

**DATED at KISII this 29<sup>th</sup> day of May, 2009.**

**A. O. MUCHELULE**

**JUDGE**