

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Miscellaneous Criminal Application 20 of 2009

GEOFRY MBUTUI OTARO APPLICANT

V E R S U S

REPUBLIC RESPONDENT

R U L I N G

The Applicant was convicted by the Butere Resident Magistrate and sentenced to serve three (3) years in prison for the offence of having or conveying suspected stolen properties contrary to section 323 of the Penal Code. He filed Criminal Appeal No. 51 of 2007 which is pending hearing. He has filed the current application seeking bail pending Appeal.

During the hearing of the application the applicant submitted that he prayed that he be given a free bond. He has a child who was to go to nursery school but couldn't because the father who is the appellant is in jail. He submitted that his wife left the homestead.

Mr. Karuri, State Counsel, opposed the application and submitted that the applicant was convicted of a similar offence in Criminal Case No. 287 of 2005 and has fully served that sentence.

I have read the lower court record, in criminal case No. 625/05 and note that the applicant was a 4th offender when he was being convicted. On 15th July 2006 he was sentenced to serve 4 months for theft of animals by the Butere Court. On 26th July, 2006 he was sentenced to serve 15 months imprisonment for house breaking by the Butere Court and on 16th December, 2005 he had been sentenced to serve three years for burglary and stealing.

It is therefore evident that the applicant is a perpetual offender. Since he would like to be given free bond, I do not think he can be trusted by the court and be set free pending the hearing of the Appeal. I find no merit in the application and the same is dismissed.

Delivered, dated and signed at Kakamega this 30th day of June, 2009.

SAID J. CHITEMBWE

J U D G E