



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Criminal Case 163 of 2008

SAMUEL NJAGI APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant was charged with another who is not a party to this application with two counts of stealing contrary to section 275 and handling stolen property contrary to section 322 (2) of the Penal Code.

After their trial, they were found guilty of the offence of handling stolen property and upon conviction, sentenced to three years imprisonment. The applicant, Samuel Njagi was aggrieved and has filed this appeal.

In the meantime, he has brought the instant application seeking to be admitted to bail pending the hearing and determination of his appeal. The application is grounded on the fact that there was no evidence upon which he was convicted; that he is likely to serve substantial part of the sentence before the appeal is heard and determined and finally that he is sick.

There is no right to bail where a court of competent jurisdiction has convicted and sentenced a person. The sentence being served is lawful and the person so sentenced may only be released on bail if the court is satisfied that the appeal has overwhelming chances of success or where there are exceptional circumstances.

Learned counsel for the respondent opposed the application and urged the court to dismiss the same as the appeal stands no chance of success.

I have carefully looked at the evidence adduced both by the prosecution witnesses and the applicant and his co-accused at the trial, and without going into the merit of the evidence, I find that the appeal may not succeed.

The applicant has also argued that he is in poor health and further that he is likely to serve substantial part of the sentence. While these two grounds do not, in the circumstances of this application, amount to exceptional circumstances, it is clear to me that the applicant, having been sentenced to serve three (3) years imprisonment on 28th August 2008, is not likely to serve substantial part of his sentence before this

appeal is set down for hearing.

As to health, there is no documentary proof on this. For these reasons, this application fails and is dismissed.

Dated and delivered at Meru this ...19th day of June 2009.

W. OUKO

JUDGE