



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Criminal Appeal 71 of 2009**

**SAMUEL TSUMA JILANI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

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**RULING**

The Applicant herein has filed this Notice of Motion dated 20<sup>th</sup> July 2009 seeking to be admitted to bail/bond during the pendency of his appeal. The Applicant herein was the 2<sup>nd</sup> accused person in the matter of Republic –vs- Swaleh Juma Mwalewa and Samuel Tsuma Jilani Criminal Case No. 50 of 2007 which was heard and determined by the Senior Resident Magistrate, Kaloleni. In that case the two accused had been jointly charged on a first count of Making a Document without Authority contrary to Section 357(a) of the Penal Code, Cap 63, Laws of Kenya. They both faced a second count of Stealing contrary to 275 of the Penal Code. At the conclusion of the trial the learned Senior Resident Magistrate did on 4<sup>th</sup> May 2009 convict both accused persons. They were sentenced to serve a prison term of four (4) years on each count, sentences are to run concurrently. The Applicant being dissatisfied with the decision of the lower court did file a Memorandum of Appeal on 15<sup>th</sup> May 2009. He did also file this present application seeking to be admitted to bail pending the hearing of said appeal.

Mr. Ouma Advocate appeared for the Applicant and argued in favour of the application. Mr. Onserio, State Counsel appeared for the Respondent State and opposed the application.

I have carefully considered the submissions of Mr. Ouma in support of this present application as well as the submissions of Mr. Onserio in opposition thereof. I have also carefully considered the cited authority of Jivraj Shah –vs- Republic [1986] KLR 605 where it was held that:-

*“2 If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist.”*

I note that the Applicant was admitted to bail in the lower court and I further note that at no time did he fail to attend court as required. I further take cognizance of the fact that the Applicant has to date served about six (6) months of his sentence. Although the appeal has not yet been admitted to hearing I have perused the Memorandum of Appeal and I am convinced that the conditions laid down by the Court of Appeal in the Jivraj Shah case have been satisfied. As such I do hereby allow this present application and I do admit the Applicant to bail pending appeal. The Applicant may be released on a bond of Kshs.200,000/- + 1 surety of a like sum. Bond to be approved by the Deputy Registrar of the High Court.

Dated and Delivered at Mombasa this 4<sup>th</sup> day of December 2009.

**M. ODERO**

**JUDGE**

Read in open court in the presence of:

Mr. Ouma for Appellant

Mr. Monda for State

**M. ODERO**

**JUDGE**

**4/12/2009**