

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 9 of 2008

AGNES WANJIRU BUNDI APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant has brought before court the Notice of Motion dated 16th January 2008. That application seeks an order of the court to grant the applicant/appellant bond with or without sureties pending the hearing and the determination of his appeal. In support of that application the applicant's advocate swore an affidavit where he stated that the appellant was convicted and sentenced to one year jail term for the offence of causing grievous harm. He deponed that that offence is bailable and that the appellant was ready to abide by any condition that the court may impose. The application was opposed by the learned state counsel. He argued that the submissions that the appellant had an appeal with overwhelming success was a

hypothetical. This he said was because the language of the court was clearing indicated.

The appellant was charged on 7th January 2008 with causing grievous harm contrary to section 234 of the Penal Code. On the charge being read to him the appellant pleaded guilty. The appellant also confirm that the facts as given by the prosecution were correct. The appellant has now filed an appeal on the ground that that plea was not unequivocal. This the appellant stated was because she did not understand English which was the language used in reading out the charge. Further the appeal is grounded on the ground that the magistrate erred in law and fact in sentencing by considering extraneous matters. The advocate for the appellant argued that those grounds showed that the appellant had high chances of succeeding in her appeal. I have considered the grounds of appeal and I have found that the same do not show or demonstrate a high chance of success in the pending appeal. Hon. Justice Ochieng found as follows when he considered a similar application in KAGUNA – VS- REPUBLIC (2000) 1 EA:-

“For the Applicant to obtain bail pending appeal, he had to demonstrate overwhelming chances of success. Minor relevant considerations would be whether there were exceptional or unusual circumstances. Previous good character of the Applicant, hardship facing the wife and children, mere ill health, or even a solemn assertion that the Applicant would not abscond, were not exceptional circumstances.”

Having found that the appellant's appeal does not show that it has high chances of succeeding I do hereby dismiss the Notice of Motion dated 16th January 2008.

Date and delivered at Nyeri this 18th day of June 2008.

MARY KASANGO

JUDGE