



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

Criminal Appeal 109 of 2008

CHRISTANTU MAKORI NYAMANYA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence in Senior Resident

Magistrate's Court Keroka Criminal Case No.928 of 2007

by Hon. Oduor Esq., S.R.M)

RULING

The appellant was convicted on his own plea of guilty to a charge of stealing by servant contrary to **section 281** of the **Penal Code**. He was sentenced to two years' imprisonment. He was aggrieved by the said sentence and preferred an appeal to this court. The appellant also filed an application for bail pending appeal.

The application was made on grounds that the appeal herein has high chances of success and that the appellant is a sickly man.

Mr. Kemo, Senior Principal State Counsel, opposed the application for bail pending appeal. He submitted that the appeal had no chances of success since the plea of guilty was unequivocal. He further submitted that no exceptional circumstances had been shown to exist so as to warrant the appellant's release on bail.

Regarding the appellant's health, Mr. Kemo submitted that no medical evidence was adduced by the appellant.

The trial court record shows that immediately after the plea was taken, the prosecutor did not read out the facts of the case. The prosecutor simply told the court – ***"facts as per charge sheet."*** In **HELLEN NYABOKE GETANGE**, Criminal appeal No.16 of 2008 at Kisii (unreported), this court cited the Court of Appeal decision in **OMBENA VS. REPUBLIC** [1981] KLR 450 where it was held that reading of facts after entry of a plea of guilty was a mandatory step in Criminal Proceedings. The court emphatically stated that it is an error for a prosecutor to fail to read out the full facts of the case and simply state: ***"facts as per charge sheet."***

In view of the above holding which applies to this matter, I am persuaded that the appeal herein has high chances of success.

Consequently, I allow the application and order that the appellant be released on his personal bond of Kshs.5000/= with one surety of a similar sum. The surety will be approved by this court's deputy registrar.

DATED, SIGNED and DELIVERED at KISII this 30th day of July, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

Mr. Momanyi for the Appellant

Mr. Kemo, Senior Principal State Counsel for the Republic.

D. MUSINGA

JUDGE