



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

MISC CRIM APPLI 113 OF 2007

JOYCE WANJIRU MWANGI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

The Applicant's application is a Chamber Summons dated 14th February 2007 in which she seeks bail pending the hearing and disposal of her appeal. The application was argued by **Mr. Nyachoti** who briefly submitted that the appeal had high chances of success and that the Applicant may serve a substantial part of sentence if application is not granted.

In support of the ground that the appeal had high chances of success, the Applicant's advocate submitted that essential witnesses, that is the driver and conductor of the vehicle in which the Applicant was traveling were not called as witnesses and that an adverse inference should have been made. Secondly in support of same ground the Government analysis report was improperly admitted under **Section 33** of the **Evidence Act**. **Mr. Nyachoti** also submitted that there was insufficient evidence to rebut the Applicant's defence in which she denied possession of the drug.

Mrs. Obuo, learned Counsel for the State opposed the application and submitted that the evidence on record was overwhelming. Learned State Counsel submitted that the two arresting officers PW1 and PW2 gave direct evidence that the Applicant had the 'kiondo' in which the drug was found. Further that the Government analysis report was properly admitted. Further that there was no need to call the driver and conductor to testify in the case.

Bail pending appeal may be granted if the appeal filed has a high chance of success. See **ADEMBA VS. REPUBLIC [1983] KLR 442**. The Applicant in this case was arrested by PW1 a police officer manning a road block, when after stopping the public vehicle in which the applicant was traveling, she and one other passenger were asked to alight holding their luggage in their hands. PW1 and PW2, his colleague both testified that the Applicant had in her hands the kiondo in which the drug was found. That is direct evidence. The appellate court will have to decide whether an adverse inference needed to be drawn for failure to call the public service vehicle crew, i.e. the driver and conductor. As far as this case is concerned, it is an arguable point. However I do not find it one that would justify a finding that it presents a high likelihood of the appeal succeeding.

The second issue raised of the Government analysis report having been admitted wrongly is a

technical point which the appeal court will decide. However, it does not also justify a finding that the appeal has an overwhelming chance of success. Since the Applicant's denial that she had the bhang is in the face of the direct evidence of PW1 and PW2, police officers who were on duty and were total strangers to the Applicant, I do not find that the denial will tilt the scales of justice to her favour.

I note that the Applicant filed her appeal last year. The appeal is likely to be heard this year and at the very most within the beginning of next year. By that time the Applicant will not have served a substantive part of sentence. See **MERALI vs. REPUBLIC [1972] EA 47.**

On these grounds I find no merit in this application. The same is dismissed in its entirety.

Dated at Nairobi this 18th day of April 2007.

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LESIIT, J.

JUDGE

Ruling read and delivered in presence of:

Applicant present

Mr. Nyachoti for the Applicant

Mrs. Obuo for the State

Tabitha CC

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DULU

JUDGE