



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Crim Appli 115 of 2007**

**VERONICAH WANGARI GICHOHI.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

Mr. Kaburu Advocate has by Chamber Summons application dated 14<sup>th</sup> February 2007 applied for bail pending the hearing and determination of the Applicant’s appeal No. 719 of 2006. The application is based on three grounds: -

- (a) That the Applicant’s appeal has high chances of success.
- (b) That the Applicant is ready and willing to abide by any terms and conditions of bond.
- (c) That the Applicant will suffer prejudice and loss if Application is not allowed.

**Mr. Kaburu**, in support of ground one of this application submitted that crucial evidence was left out in the case including the fact that the Complainant and Applicant were friends and that the Complainant was trying to settle scores. **Mr. Kaburu** also submitted that no investigations were carried out to show where the mobile phone was recovered from.

**Miss Nyamosi** learned State Counsel opposed the application and submitted that the case against the Applicant was proved beyond any reasonable doubt and that the appeal lacks in merit.

The Applicant was convicted for the offence of **stealing from person** contrary to **Section 279(a)** of the **Penal Code** and was sentenced to 3 years imprisonment. She was acquitted of two other counts of malicious damage to property contrary to **Section 339(1)** of the **Penal Code** and **creating a disturbance in a manner likely to cause a breach of the peace** contrary to **Section 95(1) (b)** of the **Penal Code**.

The Applicant now seeks bail pending her appeal on the grounds set out above.

On the issue argued by the Applicant’s advocate, **Mr. Kaburu**, I do not find any evidence to suggest that crucial evidence of the nature he raised in his submissions were omitted. Both the Complainant and the Applicant in their sworn evidence in Chief stated that they did not know each other before. The Applicant swore that the case against her was of mistaken identity. That being her defence and the evidence before the court, **Mr. Kaburu’s** argument lacks in any basis or foundation. As to the issue argued that the source of the recovered phone was not investigated, in my own assessment of the evidence before court, that fact needed no investigation. The evidence before the court was clear that the phone

was dropped by the Applicant on a day other than when it was stolen and in the presence of the Complainant and two Police Officers including PW3. PW3 retrieved it from the ground. The issue of its recovery was therefore not in doubt.

The likelihood of success in the appeal is one of the most important factors that should be considered in granting bail pending appeal. See **ADEMBA vs. REPUBLIC [1983] KLR 442** and **MERARI VS. REPUBLIC [1972] EA 47**. I find that the appeal is unlikely to succeed on the issues argued in the application.

**Mr. Kaburu** also raised other grounds that the Applicant was a first offender and was likely to serve a substantive part of the sentence since the appeal may be delayed. The possibility of a substantial delay in the hearing of the appeal is a good ground to allow an application for bail pending appeal if it is shown that the delay may result in the applicant serving a substantial part of the sentence. See **MERALI'S Case Supra**.

In this case, I have considered that the Applicant was sentenced to 3 years imprisonment. On the basis of the remarks expressed by the learned trial magistrate before passing sentence that: -

***“The accused is a first offender. A non-custodial sentence is appropriate for first offenders. However, the offence the accused is charged with is serious. She is not remorseful and has not asked the court for leniency.”***

I am of the view that the learned trial magistrate misdirected himself in sentencing and opted for custodial sentence only because the Applicant did not seek leniency. On this basis alone, that the learned trial magistrate misapplied the principles of sentencing coupled with the fact that the appeal may not be heard without considerable delay, I will allow the Applicant's application and grant her bail pending the hearing and final determination of her appeal.

The Applicant is granted bail in the following terms: -

- (a) That she signs a recognizance in the sum of Kshs.50,000/- with one surety of the same amount.
- (b) That the Deputy Registrar High Court Criminal Division to approve the surety.
- (c) There be bi-monthly mentions before the Deputy Registrar on dates to be set by her until appeal is heard.

Dated at Nairobi this 18<sup>th</sup> day of April 2007.

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**LESIT, J.**

**JUDGE**

Ruling read and delivered in presence of:

Applicant present

Mr. Kaburu for the Applicant

Miss Nyamosi for the State

Tabitha CC

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**DULU**

**JUDGE**