



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU  
Misc Crim Appli 45 of 2006**

**SAMUEL NAXON**

**ONDIEKI.....APPELLANT/APPLICANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant, Samuel Naxon Ondieki is praying for bail pending appeal under the provisions of S.356 and S.357 of the Criminal Procedure Code.
2. The Applicant was the accused in Garissa PM's Court Criminal Case Number 398/2003 where he had been charged with seven counts of the offences of making a document without authority, obtaining money by false pretences, uttering a false document and theft. He was convicted on all counts and sentenced to serve various sentences ranging from 12 months to 4 years in prison, all of them to run concurrently.
3. In the present Application, the Applicant argues that he has a good appeal with overwhelming chances of success and that he may serve a substantial part of his sentence before the Appeal is heard and determined. That he had also faithfully adhered to his terms of bond in the trial court and that he is certain of appearing when and if required before his Appeal is heard.
4. I note that the state is opposed to the Applicant being released on bail because the Applicant admitted the offences and also had jumped bail in the trial court and only appeared upon a warrant of arrest being executed. Further that the Appeal can be heard and determined before the sentence is served.
5. For my part, I am grateful to counsel for the Applicant who supplied the authority of Jirraj Shah vs R [1986] KLR 606 and in that case, the Court of Appeal stated that the principal consideration for grant of bail pending appeal is the existence of exceptional or unusual circumstances upon which a court can fairly conclude that it is in the interests of justice to grant bail. One such circumstance is that the appeal would prima facie succeed on account of matters of fact or law that would sway the court to say that the applicant should not serve his term before the appeal is heard. Applying these guidelines to this case, I do not prima facie and without pre-empting the hearing of the appeal, find that there is anything exceptional in the Appeal that would warrant the granting of bail.
6. I have seen the evidence on record and especially the cumulative evidence of P.W.1 Senior Sergeant Wilfred Kariuki, P.W.2 P.C. Kiprop Jackson Kipkoech, P.W.3, P.C. Abdullahi Godone P.W.5 Judith Ogalia Matata P.W.6 Gladys Kingori, P.W. 10, C.I.P Abdi Kadhi and P.W. 11, C.I.P Cheruiyot. Their evidence was consistent and reasonable and I do not see that there was a credible answer given by the Applicant when he was called upon to defend himself.
7. I should also say that the Applicant who was a police officer could not explain why half the witnesses were his colleagues and what reason they had to frame the charges against him. More seriously though was his conduct during the trial. He was constantly coming to court late or not coming at all and finally on 5.9.2005 his bond was cancelled but reinstated on 27.9.2005. On

23.1.2006 when the judgment was due for delivery, he again absconded and although a warrant of arrest was issued against him, on the next eight (8) mentions he was nowhere to be seen until 12.6.2006, close to six (6) months after the warrant of arrest was first issued. He cannot be trusted to appear if this court was to grant him bail pending appeal.

8. There being no exceptional reason why he should be released now and his conduct being wanting, it would be safer to keep the Applicant in prison until his appeal is heard and determined on its merits for these reasons, the Application for bail pending appeal is hereby dismissed.

9. Orders accordingly.

**Dated, signed and delivered in open court at Meru this 26th day of October 2006**

**ISAAC LENAOLA**

JUDGE

In Presence of

N/A Advocate for the Applicant

Mr. Muteti State Counsel for the State.

**ISAAC LENAOLA**

JUDGE