



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

**Misc Crim Appli 398 of 2006**

*(Application for bond/bail pending appeal from conviction(s) and sentence(s) in Criminal Case No. 286 of 2005 of the Chief Magistrate’s Court at Nairobi)*

**EVANS MUTIRA MWANDIDO.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

The Applicant has through Chamber Summons application dated 27<sup>th</sup> July 2006 applied for bail pending the hearing of his appeal. He has filed his appeal **No. 205 of 2006** which is pending before this court. In his submissions the Applicant contended that his appeal has an over whelming chance of success. The Applicant argued that whereas he had been arrested for an alleged **assault**, the offence was later changed to **stealing**. He said that he was punished excessively in that he had been in remand for 15 months during the pendency of his case in the court below. That after conviction, the trial court disregarded the period he spent in custody during the pendency of the case and sentenced him to 18 months imprisonment.

**Miss Wafula** for the State did not oppose the application on the basis that being a first offender and having been in custody for 15 months prior to the sentence of 18 months, the trial court in effect gave the maximum sentence for the offence which is 3 years imprisonment.

I have considered this application. From the record of the proceedings before me, the Applicant was convicted for cheating contrary to Section 315 of the Penal Code. He was sentenced to a fine of Kshs.50,000 in default 18 months imprisonment on 12<sup>th</sup> May 2006. I agree with the Applicant that not only does his appeal have a high chance of success, as against the sentence, the sentence itself is illegal. Since the learned trial magistrate in exercise of her discretion found Kshs.50,000/- fine was the most appropriate sentence, the default sentence she could have imposed for the offence under **Section 28(b)** of the **Penal Code** is a maximum of six months imprisonment. I will exercise my discretion under **Section 354** of the **Criminal Procedure Code** as read with **Section 362** and **Section 364** of the **Criminal Procedure Code** and set aside the default sentence of 18 months imprisonment. I order for the Applicant to serve a default sentence of six months imprisonment from date of original sentence in the lower court in default of the fine ordered of Kshs.50,000/-. Since the effect of the order will be for the immediate release of the Applicant from jail, his appeal **No. 255 of 2006** is rejected.

The upshot of the application is that the Applicant’s sentence of Kshs.50,000/- fine in default 18

months imprisonment is set aside. In substitution thereof, the applicant to pay fine of Kshs.50,000/- in default six months imprisonment from date of original sentence

Dated at Nairobi this 11<sup>th</sup> day of October 2006.

**LESIT, J.**

**JUDGE**

**Ruling read in presence of:**

Applicant present

Miss Wafula for State

CC: Ann

**LESIT, J.**

**JUDGE**