



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Crim Appli 461 of 2006**

(Application for bail pending the hearing of appeal from conviction(s) and sentence(s) in

Criminal Case No. 930 of 2003 of the Chief Magistrate’s Court at Nairobi)

LUCY WANGUI GATHONGO.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

The Applicant has by Notice of Motion dated 31st August 2006 sought to be admitted to bail pending the hearing and determination of his appeal.

The grounds of the application are indicated on the face of the application and are five in number. These are actually not grounds *per se*. The Applicant is saying that she is a teacher who is likely to loose her job if the application is not granted. The Applicant also grounds the application on the fact that her appeal has high chances of success and that will be rendered nugatory if the application is not granted.

Mr. Kayai argued the application on behalf of the Applicant while **Miss Wafula** represented the Respondent and opposed the application.

Mr. Kayai submitted that count 1 alleged that two cheque leaves were stolen from Barclays Bank of Kenya and that at the close of the prosecution case no witness had been called from Barclays to support the charge. Counsel further submitted that count 3 was a defective charge. That whereas it alleged that Family Finance Building Society was the owner of money attempted to be stolen, the loser would not have been that bank.

Miss Wafula opposed the application. Counsel submitted that the appeal did not have chances of success. Counsel submitted further that whereas the Applicant did not deny opening an account with Family Finance Bank in the name of Big Five Tours and Safaris the Applicant was neither a Director nor an authorized person in the said company. That the Applicant admitted that her boyfriend had sent her to open the account which was proof of pre-conception and fraud. Counsel urged the court not to allow the Application.

I have considered the application before me and the submissions by both counsels. The Applicant can argue that the Complainant in Count 1 was not called to give evidence yet was named in the particulars of the charge as the Complainant. That is quite true. However, the issue of count 2 being a defective charge is a contentious issue and a matter for the appellate court. It is neither obvious nor apparent that the charge is defective as the Applicant claimed. It is a matter for argument and it can only be considered by the appellate court. I think that this court will be jumping the gun if it allows for that argument at this

stage. The matter may be dented by the court in either way. I decline to determine that issue at this stage as it will preempt the pending appeal.

I decline to grant the prayers sought in this application and instead I dismiss the application itself in total.

Dated at Nairobi this 11th day of October 2006.

LESIIT, J.

JUDGE

Ruling read in presence of:

Applicant

Mr. Kayai for the Applicant

Miss Wafula for the Respondent (State)

CC: Ann

LESIIT, J.

JUDGE