



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

**Criminal Appli 369 of 2006**

**PHABIOUS MURIITHI KARIGA.....APPLICANT**

**V E R S U S**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

The Applicant **PHABIOUS MURIITHI KARIGA** was convicted for the offence of **Handling various computers and accessories** contrary to **Section 322(2)** of the **Penal Code**. He was sentenced to 18 months imprisonment on 11<sup>th</sup> May 2006. He has come to this Court by way of **Chamber Summons** brought under **Section 357** of the **Penal Code**. He seeks to be admitted to bail pending the hearing and determination of his Appeal, **HCCA No. 338 of 2006**. He also seeks a second prayer in his Application, “That all necessary directions be given” whatever that means.

**MR LWANDI** argued the application on behalf of the Applicant. **MISS. WAFULA**, State Counsel appeared for the Respondent and opposed the application.

In a brief submission, **MR. LWANDI** submitted that the Applicant was jailed for 18 months for holding stolen goods and that he had as of 26<sup>th</sup> July 2006 served 2 months in jail. That the Application had high chances of success. Further that the Applicant had no incentive to jump bail. The Counsel submitted that the Applicant’s appeal was pending before the Court.

**Miss Wafula** opposed the application and submitted that the Applicant had not proved that his appeal had an overwhelming chance of success. Counsel relied on the case of **SOMO vs. REPUBLIC 1972 EA 476**, where **Trevelyan, J** held: -

***“The most important ground is that the appeal has an overwhelming chance of being successful: in that case there is no justification for depriving the Applicant of his freedom.”***

In answer to that submission, **Mr. LWANDI** submitted that the correct position to take was that the ground given in the case cited was not the only ground for bail pending appeal. He then submitted that indeed the Applicant had high chances for success.

**MISS. WAFULA** continued to submit that indeed the Applicant was found in possession of stolen items and that the said items was proof that he had the goods with full knowledge that they were stolen.

I do not wish to go into the issue of evidence required to prove a charge of handling stolen goods, under **Section 322(2)** of the **Penal Code**. I will leave that to the appellate Court. However, I must state that an Applicant has the onerous duty of establishing that his appeal has a high chance or overwhelming chance, whichever case it may be, of success. In this case, **MR. LWANDI**, except merely stating that the appeal had a chance to succeed, made no attempt whatsoever to demonstrate it.

To be fair to the applicant, even though his Counsel did not request the court to do so, I have considered the filed supporting affidavit. It was sworn by **PETER I. SIMANI** advocate for the Applicant in his filed Appeal. It annexes the proceedings and judgment of the lower court which I have perused. The affidavit also depones at paragraph 4 that the “conviction is not supportable in law”. That averment has not been substantiated either within the affidavit itself or in **MR. LWANDI**’s submissions in support of the application. I am unable to decipher from the record on what ground the conviction may not be supportable in law.

The advocate also deponed that the appeal may take long to be listed for hearing. I am in touch with the High Court Criminal Registry and I am aware that the Applicant’s appeal will be heard within this or next High Court Session. There is no chance that the Applicant would have served a substantive part of his sentence as to render the appeal nugatory.

The Court of Appeal, **NYARANGI, PLATT & GACHUHI JJA**, in the case of **DOMINIC KARANJA VERUS REPUBLIC (1986) KLR 612**, while approving the holding in **SOMO vs. REPUBLIC**, Supra, held:

***“The most important issue was that if the Appeal had such overwhelming chances of success, there was no justification for depriving the Appellant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances...”***

The court went on to consider which situations could be regarded as exceptional or unusual circumstances but I will not consider them as they do not arise in this case. Having perused the proceedings and judgment of the trial Court, I am not convinced that the Applicant’s appeal has overwhelming or good chances of success. I find no merit in this application and I dismiss it accordingly.

Dated at Nairobi this 4<sup>th</sup> day of October 2006.

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**LESIIT, J.**

**JUDGE**

Read, signed and delivered in the presence of;

Applicant

Mr. Lwandi, advocate for the Applicant

Miss Wafula - State Counsel

Tabitha– Court clerk

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**LESIIT, J.**

**JUDGE**