

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

Criminal Case 475 of 2006

HENRY AWILI OTIENO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The Applicant herein has sought bail pending the hearing and determination of his appeal in Chamber Application dated 12th September 2006. The Application is supported by an affidavit sworn by the Appellant's Advocate which were considered. The State was not represented in this application.

Mr. Omollo on behalf of the Applicant submitted that the reason why leave was being sought was that the Applicant's appeal had high chances of success. The Learned counsel for the Applicant submitted that for the charge of **HANDLING STOLEN PROPERTY** the Applicant had given a reasonable explanation and even disclosed the person who delivered the vehicle to him. Counsel submitted further that in regard to the malicious damage charge the prosecution did not prove malice or damage against the Applicant.

I have perused the record of the proceedings before the lower court. The charges against the Applicant were **ROBBERY WITH VIOLENCE** contrary to **Section 296 (2)** of the **Penal Code** and in the alternative **HANDLING STOLEN PROPERTY** contrary to **Section 322(2)** of **Penal Code**. In Count 2 the Applicant was charged with **MALICIOUS DAMAGE TO PROPERTY** contrary to **Section 339(1)** of the Penal Code.

The evidence of the prosecution was that the Applicant was found with the Complainant's motor vehicle one day after it had been stolen from the Complainant's home while under the guard of a security guard. The prosecution case was that the glass of all the windows of the vehicle had been broken where the registration number of the motor vehicle had been imprinted. The vehicle had a registration plate reading KAN 343 A while on its grill and head lamps another motor vehicle number KAQ 282 7, which was the Complainant's vehicle number was clearly evident. The Applicant was found scratching the paint from the body of the vehicle and had succeeded to do so on both sides of the motor vehicle.

Considering the case against the Applicant and his defence in the matter, I believe that there are important issues which need to be thrust out by an Appellate court which cannot be resolved by this court. The evidence against the Applicant was strong and it cannot be argued that the Applicant's appeal has a high chance of success. In any event, it would not be justifiable to grant bail pending the hearing of his appeal, considering all the facts and the circumstances of this case, I decline to grant the bail sought. The Applicant's application is therefore dismissed in its entirety.

Dated at Nairobi this 22nd day of November 2006.

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LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Applicant present

Mr. Omolo for the Applicant

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LESIIT, J.

JUDGE