



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUSIA**

**Criminal Appeal 52 of 2006**

**EMILY AJIAMBO JUMA        ::::::::::::::::::::::::::::        APPELLANT**

**VERSUS**

**REPUBLIC                        ::::::::::::::::::::::::::::                        RESPONDENT**

**RULING**

By an application by way of Notice of Motion dated 25<sup>th</sup> November 2006, the applicant seeks orders:

- 1.        *That the applicant be admitted to bail pending the hearing and determination of the appeal.***

The application is based on the annexed affidavit of E. N. Nyaloti Advocate sworn on the 28<sup>th</sup> day of November, 2006 and a further affidavit of the applicant Emily Ajiambo Juma sworn on the 29<sup>th</sup> day of November 2006.

The thrust of the applicants case is that she delivered a child on 24<sup>th</sup> April 2006. That the prison conditions are not conducive to the well being of the infant. That there is real danger that the health of the child will deteriorate unless the applicant is granted bail pending her appeal. Further that the court did not analyse and give a reasoned decision. That the appellant was not found in actual possession of cannabis sativa hence the offence was not proved by evidence.

For the state, it was argued that the applicant has not cited the provision of the law under which the application is brought.

That in any event there are no exceptional circumstances. That sickness is not that of the applicant but of a third party, namely the child as borne out by the medical chit exhibited as 'EAJ1'. Last but not least that the sentence is four years and the appeal will definitely be heard before the applicant completes her sentence.

I have on my part carefully perused the proceedings and judgment and find as a fact that when P2 (Paul Ouma Musungu) was passing the applicant he smelled bhang and he commanded the accused person to stop. On searching the carton, she was carrying on the carrier of her bicycle, he discovered it was bhang. The samples were taken to the Government Analyst who confirmed it so. The bicycle, the carton, and 20 "stones" and 53 rolls of bhang weighing 12 kg were produced and received as exhibits. The Government Analyst report was also produced as an exhibit.

In her unsworn testimony, the applicant stated that she found PW2 (Paul Ouma Musungu) standing with another Youngman. That PW2 forced her to carry the carton, the two (PW2 and the youngman) had to

go to the police station. That PW2 did not know the applicant. They did not even hail from the same village.

The learned trial Magistrate found it strange that the applicant did not even put it to PW2 (Paul Ouma Musungu) that there was another young man present at the scene or that he forced her to carry the carton.

That in her defence the applicant did not propose any reason why PW2 (Paul Ouma Musungu) who was a stranger to her would want to frame her up.

Against that backdrop, I am of the persuasion that the learned Trial magistrate gave a reasoned judgment. In my judgment, the applicant was found transporting bhang on her bicycle. Transportation is one of the ingredients of the offence under Section 2 of the Narcotic Drugs and Psychotropic Substances (Control) Act. Accordingly, the learned Trial Magistrate was justified in convicting and sentencing the applicant as he did. Accordingly, there is no appeal with overwhelming chances of success.

As for exceptional circumstances I take the view that the evidence that there is only relates to the child of the applicant who is not the subject of the appeal and/or this application. There are no exceptional circumstances as relates to the applicant herself.

Last but not least, the sentence imposed is four (4) years. There is more than a likelihood that the appeal shall be heard and determined before the applicant serves her sentence.

In the result, I find that this application is not merited. Accordingly I dismiss it.

**DATED and DELIVERED at Busia this 22<sup>nd</sup> day of December 2006.**

**N.R.O. OMBIJA**

**JUDGE**