

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Misc Crimi Appli 35 of 2005

DAVID WAINAINA MUBEA APPLICANT
VERSUS
REPUBLIC RESPONDENT

R U L I N G

By an application dated 14th July 2005 brought under section 357 (1) of the Criminal Procedure Code, David Wainaina Mubea (hereinafter referred to as the applicant) seeks to be admitted to bail pending the hearing of his appeal.

The applicant was convicted by the R.M. Kangema for the offences of stealing by clerk contrary to section 281 of the Penal code and Altering crossings on cheques contrary to section 356 (a) of the Penal Code. He was on the 21st October 2004 sentenced to serve 2 years imprisonment on each count.

The appellant maintains through his counsel that his appeal which he has already filed high chances of success because the trial magistrate failed to adequately consider the evidence on record. The applicant also pleads that he is suffering ill health and his health continues to deteriorate due to his incarceration.

I have considered the application, the grounds of appeal and the proceedings. At this stage I can only state that the appeal raises arguable issues. It is further apparent from the copies of the medical records annexed to this application that the applicant has been suffering ill health during the time that he has been in custody and has had to be taken for treatment at the Prisons Dispensary on many occasions. I believe this is an exceptional situation justifying his release on bail to enable him attend to his health.

For the above reasons I will allow this application and do admit the applicant to bail which in the circumstances must be substantial. He may be released either on cash bail of Kshs.200,000/= or Bond of Kshs.500,000/= together with one surety of like sum.

Orders accordingly.

Dated this 17th day of November 2005

H. M. OKWENGU

JUDGE