

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

Misc Crimi Appli 552 of 2005

**(From intended appeal from conviction(s) and sentence(s) of
the Court Martial No. 3 of 2005 at Nairobi**

CHARLES KYAKA WAMBUA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

CHARLES KYAKA WAMBUA had been charged with one **SEBASTIAN WAMBUA** before the Court Martial with committing various civil offences for which they were convicted. **SEBASTIAN** applied for bail pending his appeal before this Court and was granted by my brother **JUSTICE MAKHANDIA** on 1st November 2005. When this application came up for hearing, **MISS NYAMOSI** did not oppose it. Learned counsel submitted that she had handled the earlier application and in view of the Hon. Judge's finding in that Application and for reason that the instant Application raised similar issues, she did not wish to oppose the Application.

Counsel for the Applicant, **MR. NYAMU**, relied on the ruling by Justice Makhandia and submitted that the Applicant in this application and the co-accused before Justice Makhandia faced same offences before the Court Martial. That during that trial, there were procedural lapses. For instance, the substituted charge before the Court Martial and which the Court relied on to convict was unsigned. Second after the original charges were substituted, the plea was taken before the Application was returned to his commanding officer for fresh reading, which contravened **order 21 and 33** of the **Armed Forces Standing Order**. He submitted that said lapses were part of the grounds of appeal cited in the petition of appeal. The petition was annexed to this application and is on record.

My brother Justice Makhandia held that the appeal by the Applicant's co-accused was arguable and was not frivolous and therefore granted the Applicant bail. I have also glanced at the petition of appeal filed herein and agree with the Applicant's counsel that the Applicant has raised issues of fundamental importance which if considered may lead to the quashing or setting aside of the convictions entered against him. That being the case, and without going into any further details in order not to pre-empt the appeal, I see no basis of denying the Applicant his right to bail. Accordingly the Application is granted.

The Applicant may be released on a bond of 1.5 million with one surety of same amount. Surety to be examined by the Deputy Registrar in the normal manner. Upon his executing his bond and upon release, the Applicant should continue to appear before the Deputy Registrar for mentions until his appeal is heard at the same time as his co-accused in **Misc. Application No. 379 of 2005**.

Dated at Nairobi this 20th day of December 2005.

LESIT, J.

JUDGE