



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MISC. CRIMINAL APPLICATION NO. 968 OF 2002**

**PETER KAMAU MWANGI AND ANOTHER .....APPLICANTS**

**VERSUS**

**REPUBLIC OF KENYA ..... RESPONDENT**

**RULING**

This is an application for bail pending appeal. It was mainly agitated by Peter Kamau Mwangi in Application No. 969 of 2002 who argued the application for himself and for the applicant in Application No. 968 of 2002. Felosy Mumo who is said to be his wife and who was present in court.

The two applicants were convicted on the charge of obtaining money using false pretences contrary to section 313 of the Criminal Procedure Code. They were sentenced to 21/2 years imprisonment. They both appealed against the conviction and sentence in High Court Criminal Appeals Nos. 1108 of 2002 and 1110 of 2002. They now both apply to be out on bond pending the hearing and determination of their appeal.

The Republic was represented by Miss Okumu who strongly opposed the applications. The applicants jointly indicated that they are husband and wife and in their absence from home, the five children are undergoing a traumatic experience in that they are now being fended for by neighbours. They believed they have a high chance of succeeding in their appeals as the trial magistrates was, according to them, prejudiced to the extent of refusing them a chance to call their witnesses. They claimed that if it is indicated on the record that they voluntarily closed their defence without calling witnesses, it is not true, because they protested to the end. They argued that the trial magistrate's intimidation was so strong that they had to file several applications seeking redress, which included Misc. Applications Nos. 949 of 2001 and 707 of 2002.

On the other hand the State Counsel Miss Okumu, stated that the applicants appeals chances of success are little; that the – lower court trial was fair and that these application for bond fails to show exceptional grounds upon which the court would grant the same.

I have carefully considered the grounds argued above and the nature of the offence charged as well as the sentence. I note that the applicants were granted a bond with a surety in the lower court. It is not clear from the record if they utilized it or not. It is my view that the applicant has showed an exceptional ground why they or one of them should be granted a bond or bail. Their children one of whom is only 3 years are left at the home and mercy of the neighbours. The children are innocent, even if the appeal fails.

I have had a quick perusal of the proceedings. It is true that the applicants protested against what they considered prejudice against them by the trial magistrate who they claimed did not show inclination to allow them to call defence witnesses. This court, had to intervene in misc. Application No. 707 of 2002 and order that they be allowed to call their witness. Whether their complaint was genuine or not is a matter to be considered during the determination of the appeal. For now, the matter may not be ignored.

It is my view also that the offence charged is serious and involves not a very insignificant sum which is said to have been falsely obtained from the members of the public before the applicants disappeared from their business premises.

Under the above circumstances it is the view of this court that the first appellant Felosy Mumo Eldioni will be released on free bond of Kshs.300,000/-. The second appellant will be released on cash bail of Kshs.50,000/- with a surety for a similar amount.

It is so ordered.

Dated and delivered at Nairobi this 30th day of January 2003

D.A. Onyancha

**JUDGE**