



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPLICATION NO. 28 OF 2003**

**(IN THE MATTER OF THE INTENDED APPEAL)**

**BETWEEN**

**JOSEPH ABIO GALANA..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

The Applicant was charged and convicted for the offence of theft by servant and sentenced to serve 2 years imprisonment. He has preferred an appeal and applied to be freed on bond pending the hearing of the said appeal.

At the hearing of the said application, the Applicant was not present because the prison authorities at Hola Prison were not able to transfer him to Mombasa due to the heavy rains in the District which have rendered roads impassable. It is for the same reasons that the original court file was said not to be available.

Mr. Magolo strongly presented the arguments that the appeal will take long to be heard and the Appellant has a good appeal. The State Counsel however was of the view that the appeal should be set down for hearing. Instead of granting the bond.

I have read the proceedings and without pre-empting the appeal I find there are certain glaring aspects of the evidence that need be considered on appeal. These are discrepancies as to who was in-charge of the Exhibit store and also the time in question the solar panels were indeed stolen if at all.

It is with this in mind that I admit the appeal and order that the same be set down for hearing the soonest possible and the original file and Appellant be transferred to Mombasa without further delay. In the circumstances I see no need to grant the bond. It is so ordered.

**Dated and delivered this 5th day of June 2003.**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**