



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS CRIMINAL APPLICATION NO.426 OF 2003**

**JOSPHAT MWATHU..... APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

The applicant herein has applied to this Court to be granted bail/bond pending the hearing and determination of his appeal.

There is also an alternative prayer made by the applicant. It is that if the Court is unable to grant bail, he requests that his appeal be heard instead.

I will deal with the applicant's alternative prayer first. Several such prayers have come before the High Court in the recent past and the impression has been created that the applicants are calling upon the Court either to grant bail or else they must hear the applicant's appeals on priority basis. If this is the intention, it is misconceived. An applicant cannot dictate to the Court in this manner. The Court will fix hearings on dates convenient to it and all parties.

With regard to the applicant's application for bail pending appeal, I note as follows: that he was convicted of the offence of stealing, contrary to section 275 of the Penal Code [Cap.63]; that he pleaded guilty; that he was treated as a first offender; that he was sentenced to 2 years imprisonment; and that he undertakes to abide by conditions laid down by the Court if released on bail pending appeal. I note that the applicant told the trial Court that he is mentally unstable; that he was remorseful; and that he will never repeat the mistake he made. The applicant indicated to this Court at the hearing of his application that he intends to make arrangements to compensate the complainant and that this would be facilitated by his release.

Learned counsel for the respondent, Mr. Monda informed this Court that since the applicant indicated he was ready to compensate the complainant, (counsel) would leave the matter to Court.

The central consideration in an application for bail pending appeal is whether there are exceptional circumstances, giving the appeal high chances of success. Presumably the applicant's appeal will be against severity of sentence, which may well succeed, whether wholly or in part

The applicant's application is allowed. He is granted free bond on condition that he reports to the police establishment nearest to his home, i.e. Kwa Michael Police Post, once a week pending the hearing and determination of his appeal, which he has already filed. Mention on 01.10.03 for purposes of ascertaining if the applicant is complying with the Court reporting order.

**Delivered at Nairobi this 30th day of July, 2003**

**B.P. KUBO**

**JUDGE**

