

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

CRIMINAL APPLICATION NO. 17 OF 2002
APPEAL NO. 460 OF 2001

**(From Original Conviction and Sentence in Criminal Case No. 441 of 2000
of the Resident Magistrate's Court at Mombasa A.W. Ngugi – R.M.)**

LILIAN KALEKYE MAINGI APPLICANT

- VERSUS -

REPUBLIC RESPONDENT

RULING

This is an application by Chamber Summons brought under Section 357 of the Criminal Procedure Code seeking an order for the release of the Applicant on Bail pending the hearing and determination of the Appeal herein. The application is supported by an Affidavit sworn by the applicant's Counsel Ngacaku Gakuhi sworn on 18th January, 2002. It is supported by reasons that the Appeal has an overwhelming chance of success as the trial court did not take into account that Photo copy receipts were produced in evidence contrary to the laid down provisions of the law.

It further failed to consider the issue of pre-existing disagreement between the Applicant and the complainant which gave rise to a pending Civil Case and known threats by the complainant as against the Applicant.

Counsel for the Applicant further submitted that the prosecution failed to prove its case beyond any reasonable doubt after which the court proceeded to convict and sentence the Applicant to 2 years imprisonment which sentence he submits is excessive considering the mitigating factors.

The state Counsel Ms. Mwaniki did oppose the application on the grounds that the presumption is always that the trial court is right until decided otherwise. I have read the Appeal record as well as the proceedings and judgement as is required. I am in agreement with the State Counsel that the presumption is that one has been rightly convicted until otherwise decided. However this Court is also empowered under the Provisions of the Criminal Procedure Code to consider and release persons so convicted on Bail provided that they meet the laid down requirements. The main consideration is whether the appeal has a chance to success and this the Applicant's Counsel has highlighted the areas giving rise to this appeal. He also asked the court to consider the mitigating factors which are that the applicant is a young mother with a child who suffers from Bronchitis and her husband is not in any gainful employment.

I have considered all the points in favour of the applicant and note the issues raised in mitigation. The Courts are meant to help in rehabilitating.

The Applicant is a first offender and has a family to take care off. It is for this reason that she is released on Bond of 50,000/= plus 1 surety of an equal amount pending the hearing and determination of the Appeal. She was on a similar Bond during the hearing of the original trial.

Dated and Delivered at Mombasa this 22nd January, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE