



**Kimani v Republic (Criminal Appeal E045 of 2023)
[2024] KEHC 1291 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E045 OF 2023
RN NYAKUNDI, J
FEBRUARY 16, 2024**

BETWEEN

LUCY NDUATA KIMANI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Coram: Before Justice R. Nyakundi

Mr. Mugun for State

Mr. Bulbul Advocate

1. The applicant was charged, tried, convicted and sentenced to a fine of 51,000/= in default 12 months in each count premised as follows;

Count I

Stealing contrary to section 268 as read with section 275 of the *penal code*. In brief on the 27th day of June 2022 between 12.42hrs and 13.00 hrs at Kisumu Ndogo estate Kapseret Sub County within Uasin Gishu County being an M-pesa operator of James Holdings Moi's Bridge Junction, unlawfully and without authority transferred cash to Benard Mutai of Mobile No. 0726xxx40 29,582/=the property of Joel Mwangi.

Count II

Stealing contrary to section 268 as read with section 275 of the *penal code*. In brief on the 27th day of June 2022 between 12.42 hrs and 13.00hrs at Kisumu Ndogo estate Kapseret Sub County within Uasin Gishu County being an mpesa James Holdings Moi's Bridge Junction, unlawfully and without authority transferred cash to Jackson Mwangi of Mobile No. 0768xxx140 amount 69,411/=the property of Joel Mwangi.



Count III

Stealing contrary to section 268 as read with section 275 of the [penal code](#). In brief on the 27th day of June 2022 between 12.42 hrs and 13.00hrs at Kisumu Ndogo estate Kapseret Sub County within Uasin Gishu County being an m-pesa James Holdings Moi's Bridge Junction, unlawfully and without authority transfer 60,230/=the property of Joel Mwangi.

Count IV

Stealing contrary to section 268 as read with section 275 of the [penal code](#). In brief on the 27th day of June 2022 between 12.42hrs and 13.00 hrs at Kisumu Ndogo estate Kapseret Sub County within Uasin Gishu County being an m-pesa operator of James Holdings Moi's Bridge Junction, unlawfully and without authority transferred cash to John Kimani Chege of Mobile No. 0712xxx482 amount 44,800/= the property of Joel Mwangi.

2. Being aggrieved with the decision of the trial court the applicant has preferred an appeal before the High Court on the grounds anchored in the memorandum of appeal. In the interim she has asked the court to simultaneously consider releasing her on bail pending appeal.

Determination

3. To the set of factors that constitute the triggers upon which this court can be influenced to exercise discretion has been discussed in various authorities as summarized herein below:

In the case of [Jiviraj Shah v Republic](#) (1986) KLR 605 the court stated as follows;

1. "The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the court of appeal can fairly conclude that it is in the interest of justice to grant bail.
2. If it appears prima facie from the totality of circumstances that the appeal is likely to be successful on account of some substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.
3. The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued."

In the case of [Dominic Karanja v Republic](#) (1986) KLR 612, the Court of Appeal stated that:

"The most important issue here is the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty."

4. I have taken time to chew and internalize the issues as canvassed by both parties as well as the principles in the above cases. The issue for determination by this court is whether the applicant has advanced good cause warranting exercise of discretion to release her on bail pending appeal. With the above principles in mind, and on the grounds pleaded in the application there is merit to release applicant on bail on the strength of the nature of the sentence and a likelihood that there are exceptional circumstances to have her released on bail at this stage of the appeal process. In the same spirit the applicant be and is hereby released on bond terms of 100,000/= with a surety of identical amount to be approved by the Deputy Registrar of the High Court.



DATED SIGNED AND DELIVERED AT ELDORET THIS 16TH DAY OF FEBRUARY, 2024.

.....

R. NYAKUNDI

JUDGE

