



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL APPEAL NO. E064 OF 2021**

**BETWEEN**

**NANCY NDUTA WAIRIMU..... APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. **NANCY NDUTA WAIRIMU** was convicted of four counts of forgery by the Thika Chief Magistrate's court. She was aggrieved by her conviction and sentence of 4 years on each count, which sentence runs concurrently. She has accordingly filed this appeal. She has filed an application for bail pending the hearing and determination of this appeal.

2. The principle consideration when a court is faced with an application for bail pending appeal was discussed in the case **JIVRAJ SHAH VS. REPUBLIC (1986) KLR 605** 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 face from the totality of the 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.”*

3. The forgery which the appellant was convicted of, related to a land transaction. The probation officers report presented before the trial court showed that the appellant and the complainant were in the process of negotiating a settlement which would lead to the complainant receiving an alternative land.

4. Having considered the trial court's proceedings and judgment, I have formed the opinion that the appellant's appeal may have a chance of success. In view of the above and because the appellant is a civil servant with a permanent abode, and because the appellant had been granted bail during her trial whose terms she did not breach, the application does succeed.

5. I grant the following orders:

(a) The appellant shall be released pending the hearing and determination of this appeal on her own bond of Khss.500,000/= with two sureties of similar amount.

(b) Appellant shall attend mention of this appeal before the Deputy Registrar until this appeal is disposed. A mention date will be fixed at the reading of this Ruling.

(c) The appellant shall not leave the jurisdiction of this Court without the permission of the court.

6. Orders accordingly.

**RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Maurice

For DPP :- Ms. Kathambi/Kasyoka

For Appellant :- Ms. Wanjiru

Accused : **NANCY NDUTA WAIRIMU:- Present**

**COURT**

RULING delivered virtually.

**MARY KASANGO**

**JUDGE**