



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL APPEAL NO. 51 OF 2019

RUTH WAMBUI GITHINJI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Application for bail pending appeal from the decision of M. Wachira, Chief Magistrate

in Criminal Case No. 637 of 2016 at Murang'a delivered on 13th November 2019]

RULING

1. The appellant was convicted for obtaining money by false pretences contrary to section 313 of the **Penal Code**. She was sentenced to imprisonment for 2½ years.
2. The particulars were that on diverse dates in the year 2016, she received Kshs 1,100,000 from the complainants by falsely pretending that she was in a position to facilitate their company acquire some trading licences.
3. The appellant lodged a petition of appeal on 25th November 2019. Pending the hearing and determination of the appeal, she now prays for bail. The application is founded on her deposition sworn on 20th December 2019.
4. On 2nd July 2020, I heard brief arguments from her learned counsel, *Mr. Ndegwa*. He submitted that the appeal has overwhelming chances of success; and, that there is a risk that the appellant will serve a substantial part of the sentence before the appeal is determined.
5. In a synopsis, the appellant's case is that there are exceptional circumstances that warrant grant of bail.
6. The application is contested by the Republic. Learned prosecution counsel, *Mr. Waweru*, submitted that the appeal is hopeless; and, that no case has been made out to release the appellant on bail.
7. The legal parameters in an application of this nature were well stated by the Court of Appeal in ***Jivraj Shah v Republic*** [1986] KLR 605-

*If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision is **Somo v Republic** [1972] EA 476 which was referred to by this court with approval in Criminal Application No. NAI 14 of 1986, **Daniel Dominic Karanja v Republic** where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed.*

8. The petition of appeal raises seven grounds. I can condense them into three: Firstly, that the prosecution did not establish the key ingredients of the offence; secondly, that the totality of the evidence did not support the charge; and, lastly, that the conviction and sentence were unlawful.
9. I have paid heed to the particulars of the charge; and, the evidence of some of the prosecution witnesses particularly PW1, PW2, PW3, PW4 and PW5. The gist of their evidence was that the appellant made representations that she was well placed to secure for the complainants a licence to sell Kenyan coffee in Europe.
10. I have also studied the unsworn statement made by the appellant in the lower court. She denied the offence and claimed that the charges

were trumped up to mask a dispute with her church bishop.

11. It will now be the province of the first appellate court to re-evaluate the circumstances under which money was allegedly paid to the appellant; or, whether the charges were a façade. The less I say about it, the better.

12. I agree that the points raised in the petition of appeal are *arguable*. But I am not persuaded that they disclose *exceptional grounds*; or, that a *substantial point of law or evidence* has been urged to sway the court to grant bail pending appeal.

13. The appellant was sentenced to a term of *2½ years*. On the face of it, the sentence handed down is not *illegal*. I *cannot* also say that a *substantial part* of the sentence *will* be served *before* the appeal is heard and determined. I note that the Record of Appeal has been filed and served. In the interests of justice, I direct the Deputy Registrar to place the appeal before the Judge in chambers for admission; and, that the appeal be *fast tracked*.

14. The upshot is that the appellant's *chamber summons* dated 23rd December 2019 is *dismissed*.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 14TH DAY OF JULY 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Mr. M. N. Ndung'u holding brief for Mr. Ndegwa for the appellant instructed by Mbue Ndegwa & Company Advocates.

Mr. S. Mutinda for the Republic instructed by the Office of the Director of Public Prosecutions.

Ms. Dorcas Waichuhi and Ms. Susan Waiganjo, Court Assistants.