



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**CRIMINAL APPEAL NO. 67 OF 2018**

**MARY CHEPTUM .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

This is an application for bond pending hearing and determination of the appeal which was lodged on 6<sup>th</sup> of September, 2018. The appellant/Applicant by way of notice of motion filed the application on 19<sup>th</sup> September, 2018. The said application is founded on the grounds that:-

1. The filed appeal is meritorious and has overwhelming chances of success.
2. There are exceptional circumstances warranting the release of the appellant on bond and or bail.
3. The balance of convenience tilts in favour of granting the appellant bond for she is a primary school teacher who'll lose her job if she conducts her appeal while in custody.
4. The appellant is a single mother of two minors and it is only fair that she continues to take care of them while she pursues the appeal.
5. If the application is not allowed the appeal may be rendered nugatory for the applicant may have completed sentence by the time it is heard and determined.

The said application is also supported by the affidavit of the applicant sworn on 19<sup>th</sup> September, 2018. In it she confirms the aforementioned grounds and in addition depones that she is a student, pursuing a degree in Guidance and Counselling at Kisii University. If granted bond she says she'll abide by the terms and conditions which the court will impose. In the lower court she was out on bond and did not abscond. Her monthly pay is paltry Kshs. 11,500 per month and she is unable to pay the imposed fine of Kshs. 2,500,000/-.

When the application came up for hearing on 29<sup>th</sup> October, 2018 *Mrs. Kagali* who appeared for the state did not oppose the application. She said she had perused the record and there are areas which merit the appeal.

I have considered the said application. What comes out clearly is that the filed appeal is meritorious and has overwhelming chances of success. The appellant is not a flight risk given that in the lower court she was out on bond of 800,000/- and never absconded. She is also a teacher and a mother of two children who depends on her. Currently she is also pursuing a degree course at Kisii University, in Guidance and Counselling. She has strong family and social ties which makes her a person unlikely to abscond. Though convicted on all the six counts and fined on each count 500,000/- in default to serve 2 years imprisonment the custodial sentences runs concurrently which means she is to serve only 2 years in custody. There is a chance that if bond or bail is not granted she may have served the full sentence or a substantial period of it by the time the appeal is heard and determined. Her being a single mother of two, and their sole bread winner, makes it the best interest of the said children that she is released on bond to continue taking care of them.

However, it need be understood that unlike in the lower court where the applicant was a suspect, at this point she is a convict, which may raise temptation to abscond. This calls for stiffer bond terms than those

granted by the lower court. I therefore find the application merited and is granted. The appellant will be released on own bond of Kshs. one million with one surety in like amount.

The appeal is admitted to hearing. We can have a hearing date.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 7<sup>th</sup> day of November, 2018**

In the presence of:-

The Applicant/Appellant

Ms Mumu for state

Mr. Mwelem – Court assistant