



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO. 91 OF 2018

MARY WAMAITHA MURIU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant filed a notice of motion application seeking orders that:

a) The court be pleased to grant the appellant reasonable and favourable bond/bail terms pending the hearing and determination of the appeal.

b) The court be pleased to stay/and or suspend the sentence imposed pending the hearing and determination of this appeal.

2. The grounds upon which the motion is brought is that the appellant was sentenced to pay a fine of KShs. 1,060,000/- in default, to serve 21 years in prison. That she is unable to raise the said amount that she was fined as she has no source of funds and has therefore begun serving the sentence at Lang'ata Women's prison. That given the time it will take to hear and determine the appeal, if successful the appeal will be rendered nugatory. That she is the sole breadwinner of her young family and therefore her being in custody will leave her family destitute and desperate. That she is not a flight risk and is ready to adhere to any terms and conditions imposed by this court. That she did not breach the bail conditions that were imposed by the lower court. That the order issued by the trial court reverting the title deed to the complainant will render this appeal nugatory and therefore the judgment ought to be stayed. That the respondent will not suffer any prejudice.

3. The respondent did not oppose the application. It was submitted that the trial court had no jurisdiction to adjudge the matter since it was related to land.

4. The principles upon which bail pending appeal is to be granted were discussed in **Dominic Karanja v. Republic [1986] KLR 612** where the court of Appeal held:

“

a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the Applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.

b) The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.

c) A solemn assertion by an Applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.”

5. Applying the test, there arises an issue whether or not the case was proved to the required standard and whether or not the trial court had the jurisdiction to delve into the ownership of land which is a preserve of the civil courts Further the appellant is said to be a mother with very young children a fact not disputed by the respondent. These are matters which may swing the scales in favour of the appellant if established. Bearing in mind also the court's workload, it is clear that the appellant might serve a substantial part of the sentence before her appeal is heard and determined thereby occasioning her prejudice. In the circumstances, I find merit in this application and accordingly allow the same in the following terms:

- a) The applicant may be released on her own bond of Kshs.500,000/= (Kenya Shillings Five Hundred Thousand) with a surety of a like amount;*
- b) The surety shall be approved by the Deputy Registrar of this Court;*
- c) Once released, the appellant shall attend court during the hearing and mention dates and or whenever required to do so until the appeal is heard and determined or until further orders of this Honourable Court;*
- d) In default, the bond shall stand cancelled and the surety be called to account.*

Orders accordingly.

Dated and delivered at **Machakos** this **11th** day of **December**, 2018.

D. K. KEMEI

JUDGE