

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC.CRIMINAL APPLICATION NO. 368 OF 2015

SSGT SAMUEL ARESI ARESI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application herein is dated 15th October, 2015 brought under **Section 123(3), 126 and 357 of the Criminal Procedure Code, Article 51 of the Constitution** and other enabling provisions of the law. The main prayer is that the Appellant be admitted to bail pending the hearing and determination of an appeal he has filed in this court.

The Applicant was a Senior Sergeant with Kenya Defence Forces until he was convicted by the Court Martial where he was charged with two counts of committing a civil offence contrary to **Section 133(1) (b) of the Kenya Defence Force Act 2012**. In the first count, he was charged with being in possession of wildlife trophy contrary to **Section 95 of the Wild life Conservation and Management Act 2013**. It was alleged that he had been found with four pieces of elephant tusk without a permit. In the second count he was charged with dealing in wildlife trophy contrary to **Section 84(1) of the Wildlife Conservation and Management Act 2013** as read together with **Section 92 of the same Act**. It was alleged that he was found dealing in four pieces of elephant tusk without a license. The Court Martial sentenced him to serve seven years imprisonment and was given 14 days to appeal. He was dissatisfied with the decision of the Court Martial and he preferred an appeal vide **Nairobi High Court Criminal Appeal No. 135 of 2015**.

The principles guiding the court in granting bond pending appeal were clearly set out by the Court of Appeal in the case of **Jivraj Shah vs Republic [1986] KLR 605 at page 606:**

“There is not a great deal of local authority of this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exists exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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 in 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 in Somo vs Republic [1972] E A 476 which was referred to by this court with approval in Criminal Application No. NAI 14 of 1986, Daniel Dominic Karanja vs 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 discloses substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. It is almost self-defeating to attempt to define phrases or to establish formulae. There is a helpful passage in Archbold, Criminal pleading Evidence and Practice, 41st Edition page 783, paragraph 7-86”.

I have looked at the Memorandum of Appeal, and by no means are the grounds of appeal raised therein frivolous. One of the major grounds is the question of whether or not the Court Martial had jurisdiction to try the Applicant for a civil offence when he was charged under the **Wildlife Conservation and**

Management Act 2013. On that ground alone, I think, *prima facie*, the appeal has an overwhelming chance of success. I am then of the view that this application should succeed.

In the result, the application is allowed with an order that the Applicant shall execute a bond of Kshs. 500,000/= with a surety of a similar amount or pay a cash bail of Kshs. 100,000/=. The surety shall be assessed by the Deputy Registrar of this court. It is so ordered

DATED and DELIVERED this 8th day of **March, 2016**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *for the Applicant*
2.*Respondent.*