

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 127 OF 2015

(Appeal from original Conviction and Sentence in Kangema PM's Criminal Case No 393 of 2014 - J. O. Magori, PM)

LUCY WANJERI MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Appellant herein, **Lucy Wanjeri Mwangi**, was convicted after trial of ***being in possession of narcotic drugs*** contrary to **section 3(1) as read with section 3(2) (a)** of the ***Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994***. She was sentenced to serve seven (7) years imprisonment. She has appealed against both conviction and sentence. The appeal is pending hearing.
2. She has in the meantime applied by notice of motion dated 22/01/2016 to be admitted to bail pending disposal of her appeal.
3. Learned counsel for the Appellant has submitted that the Government Analyst's report on the drugs allegedly found in the possession of the Appellant was produced, not by the maker thereof, but by the investigating officer of the case without a proper basis being laid for not calling the maker; and further, that the Appellant, who was not represented, was not asked whether she had any objection to production of the report by the investigating officer.
4. In reply it was pointed out by learned prosecution counsel that **section 77** of the ***Evidence Act, Cap 80*** permits such production, with the proviso that the court may direct the attendance of the maker of the document for examination. It was learned counsel's view that though the Appellant was not asked if she wanted to have the maker of the report called for examination there was no failure of justice.
5. Learned counsel for the Appellant also submitted that possession by the Appellant was not proved beyond reasonable doubt. As correctly pointed out by learned prosecution counsel, matters of evidence are best canvassed at the hearing of the appeal.
6. I have perused the record of the trial court. Having considered the submissions of the learned counsel, I am not persuaded that this is a suitable case to admit the Appellant to bail pending disposal of her appeal. Her application is therefore refused and dismissed. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 8TH DAY OF SEPTEMBER 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 9TH DAY OF SEPTEMBER 2016