



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
CRIMINAL APPEAL NO. 16 OF 2016

[From original conviction and sentence in Criminal case no. 1013 of 2012 of the Principal Magistrate's Court at Keroka]

1. ANNAH NYANDUKO OSORO
2. YUSABIA KEMUNTO.....APPELLANTS

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

This application dated 21st July 2016 is brought under **S. 36 of the Criminal procedure code** for the two appellants/Applicants **Anna Nyanduko Osoro** and **Yusabia Kemunto Abunga Alias Grace Kerubo Osoro**, both seek to be admitted to bond or bail pending the hearing and determination of their appeal.

The two convicts were charged for the offence of obtaining money by false pretense contrary to **Section 313 of the Penal Code** and making a document without authority. They pleaded not guilty and the matter was duly heard before Keroka principal Magistrate's Court. A judgment was delivered on 15th day of May 2016 in which both found guilty as charged and were duly convicted and sentenced to 3 years imprisonment on **Count 1** and **4 years imprisonment on Count No. 2**.

However, being dissatisfied, they have decided to appeal and have duly filed a petition of appeal on 23rd May 2016, as **High Court Criminal Appeal No. 16 of 2016** at Nyamira high Court. And they now apply to be admitted to bond/bail pending their appeal. This is the subject matter which requires courts decision.

SUBMISSIONS

(a) By Mr. Bwonwong'a, learned counsel for the two appellant.

That the appellants were released on bond at the hearing in the lower court and that they duly complied with the terms of the bond. They would do the same if given bond.

That both have children who will suffer if they are not released on bond.

That the 2nd appellant is a widow

That the 2nd appellant is sickly, her continued incarceration will affect her health.

That their appeal has overwhelming chance of success.

(b) By Mr. Ochieng, learned counsel for the prosecution, in opposing submitted that:

That my application for bond/bail pending appeal is based on two known legal principles that have been set out through judicial authorities:

(i) **That** the appeal has overwhelming chance of success

(ii) **That** there exists exceptional circumstances that merit the granting of the application.

None has been shown by the learned counsel for the appellant/applicant.

That the two applicants are convicts and as such they don't enjoy the status of the accused persons who are presumed innocent until proved guilty.

That issues of previous good conduct and hardship are not good grounds to support this application.

That issues of sickness can be handled at the prison facilities where the convicts are being held.

That the Respondent rely on authority of Criminal application No. 14 of 1986 of the court of appeal, by Nyarangi, Platt and Gachuhi JJA.

The analysis by the Court

The court has perused the affidavit by the appellants/applicants sworn on 25th July 2016. The court has also considered the submissions by the two learned counsels and they rely thereof. The court has looked and read the legal authority by the Respondent counsel. The court finds that there is no merit in this application for admission to bond/bail. The overwhelming chance of this appeal succeeding has not been demonstrated albeit on prima facie basis. Neither is there an exceptional circumstances that warrants the granting of this application which has equally not been demonstrated by the applicant counsel.

Therefore there is no merits to this application.

The application is therefore dismissed.

Orders accordingly.

Dated and delivered at Nyamira High Court this 6th day of October 2016.

C. B. NAGILLAH

JUDGE

In the presence of :

Anyona hold brief for Bwonwong'a for the Appellants

Ochieng for the Respondent

Omayio – Court Clerk