

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.476 OF 2014

CYRUS IRERI DANIEL.....

.....**APPLICANT**

VERSUS

**REPUBLIC.....RESPOND
ENT**

RULING

The Applicant, Cyrus Ileri Daniel was charged, together with others not before court, with eight (8) counts of **obtaining money by false pretences** contrary to **Section 313** of the **Penal Code**. The particulars of the offences were that on various dates between 28th January 2011 and 19th March 2011, the Applicant obtained various sums of money from Josephine Ngina Mwaura, the complainant listed in the charge sheet, by falsely pretending that he would be in a position to sell to them electrical cables, a fact the Applicant knew to be false. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, the Applicant was convicted of all the counts. He was sentenced to serve two (2) years imprisonment on each count. The sentences were ordered to run concurrently. He was aggrieved by his conviction and sentence and has appealed to this court.

Pending the hearing and determination of the appeal, the Applicant has applied to be released on bail pending appeal. The application is supported by the annexed affidavit of Pauline Mundeshi, the Advocate of the Applicant. She states that the appeal has merit and has a high likelihood of success. She stated that if the Applicant is not released on bail pending trial, the appeal if successful would be rendered nugatory. The Applicant was willing to provide such security as may secure his attendance before this court. Learned counsel swore a further affidavit in support of the application. She stated that when she visited the Applicant in prison on 28th January 2015, she noted that the Applicant had developed a kidney disease which caused his legs to swell. The Applicant also suffered severe pain in his abdomen. She stated that the Applicant's condition can only be treated by his doctor who is currently based in Meru. During the hearing of the case, counsel for the Applicant amplified these grounds for seeking the Applicant to be released on bail pending trial. Mr. Kabaka for the State conceded to the application on the sole ground of the Applicant's health.

In order to succeed in an application for bail pending appeal, the applicant must establish existence of exceptional circumstances which will enable this court rule in his favour. He must also establish that he has an appeal with a high chance of success. Having perused the petition of appeal and the proceedings and judgment of the trial court, this court is of the view that, prima facie and before arguments are made before court, this court cannot say that the appeal lodged by the Applicant has high chances of success. The fact of the matter is that the complainant paid certain sums to the Applicant in expectation that the Applicant would deliver certain goods. During the entire hearing of the case before the trial court, the Applicant made no effort to pay back the sum that was paid to him by the complainant. If the Applicant had made at least some effort to refund the money, this court would have been persuaded to grant bail pending appeal. The fact that the Applicant is ailing does not constitute exceptional circumstances for this court to release him on bail pending appeal. His medical condition can and is treatable while the Applicant is in prison. I am not persuaded that the Applicant requires specialized treatment that would persuade this court to release him on bail pending appeal.

In the premises therefore, although the State did not oppose the application, this court is not persuaded that the Applicant put forward a case for this court to release him on bail pending appeal. His application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 9TH DAY OF MARCH 2015.

L. KIMARU

JUDGE