

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APP. NO.63 OF 2015

STELLA NYONGESA OUMKHULU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Stella Nyongesa Oumkhulu, was charged with the offence of **stealing by servant** contrary to **Section 281** of the **Penal Code**. The particulars of the offence were that on diverse dates between the month of February and August 2014 at Comfort Gardens, Gigiri (the complainant) in Nairobi County, the Applicant being an employee of the said complainant stole the sum of Kshs.448,536/- which came into her possession by virtue of her employment. When the Applicant was arraigned before the trial magistrate's court, she pleaded guilty to the charge. She was convicted on her own plea of guilty. She was sentenced to serve two (2) years imprisonment. She was further ordered to refund the money that was stolen.

The Applicant was aggrieved by this decision and has duly filed an appeal to this court. Pending the hearing and determination of the said appeal, she has moved this court pursuant to **Sections 356** and **357** of the **Criminal Procedure Code** seeking to be released on bail pending appeal. The Applicant states that her appeal has high chances of success because the plea of guilty that was recorded was equivocal. She states that the charge she was facing and all the elements thereof were not explained to her. She stated that if bail pending appeal is not granted, by the time the appeal is heard, he would have served her sentence and therefore renders the appeal nugatory. The application is supported by the annexed affidavit of Nephth Kiboi, counsel for the Applicant who reiterated the contents of the grounds in support of the application. In particular, he stated that the Applicant was not given an opportunity to seek legal services before she was required to plead to the charges. The application is opposed. Mr. Kabaka for the State submitted that the Applicant had not established existence of overwhelming evidence which will persuade this court to decide the appeal in her favour. He was of the view that the Applicant had placed no grounds before this court to enable the court exercise its discretion in her favour. He urged the court to dismiss the application.

This court has carefully considered the rival arguments made by counsel for the parties before this court. The issue for determination by this court is whether the Applicant made a case for this court to grant her bail pending appeal. That this court has jurisdiction to grant such bail is not in doubt. The Applicant is required to establish to the satisfaction of the court that she has an appeal with overwhelming chances of success. The Applicant is further required to establish existence of exceptional or unusual circumstances that will persuade this court to find in her favour. The position of the Applicant is different to that of an applicant seeking bail pending trial. This is because the Applicant has already been convicted subject to her appeal being considered by the High Court. The Applicant argues that her appeal has overwhelming chances of success. The Applicant was convicted on her own plea of guilty. This court has perused the record of the trial court. This court was, prima facie, unable to discern any irregularity in the manner in which plea was taken. This court therefore does not agree with the Applicant that her appeal, prima facie, has overwhelming chances of success. Further, the Applicant did not establish existence of any exceptional or unusual circumstances to persuade this court to exercise its discretion in her favour. The

sentence meted on the Applicant, on the face of it, appears to be legal. This court agrees with the State that there are no grounds upon which this court can exercise its discretion in the Applicant's favour to grant her bail pending appeal.

For the above reasons, the application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 10TH DAY OF MARCH 2015

L. KIMARU

JUDGE