



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 35 OF 2015**

**ANDREW N. MUSYOKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant/appellant herein has applied to be released on bail during the pendency of his appeal. The appellant had been tried and convicted by a court martial sitting in Lanet and was sentenced to serve one year imprisonment with no option of a fine.

From the time when this application was filed on 23/6/15, several efforts have been made by both defence counsel and the office of the DPP to obtain certified copies of the proceedings of the court martial. All these efforts have borne no fruit. The court also stepped in and issued a summons to SOI legal at Defence Headquarters to avail the said proceedings. The court summons was also ignored. As such due to the intransigence of the Department of Defence the court is denied the opportunity to peruse the proceedings in this matter. Be that as it may the appellant was convicted and sentenced to serve one (1) year imprisonment in January 2015. He has filed an appeal against the judgment of the court martial. The appellant has already served ten (10) months of his sentence. There is the very real possibility that he may complete his full sentence before his appeal is heard and determined. The unavailability of the court martial proceedings cannot be blamed upon the appellant, his lawyer, this court or even the DPP. The blame lies squarely on the doorstep of the Department of Defence. In order not to further prejudice the appellant, in order not to render his appeal nugatory and alive to the fact that the appellant has a right to be considered for bail, I do hereby admit the appellant to bail pending the hearing and determination of his appeal. I grant appellant a bond of Kshs.200,000/- plus one surety of a like sum.

Read in open court.

Mr. Mongeri for the accused

Mr. Chirchir for DPP

Mention 18/12/2015.

**Dated at Nakuru this 6<sup>th</sup> day of November, 2015.**

**MAUREEN A. ODERO**

**JUDGE**