



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**MISC CR. AP NO. 93 OF 2014**

**MICHAEL ADIEDO OCHIENG .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*From original conviction and sentence in criminal case Number 2034 of 2010 in the Chief Magistrate's court at Milimani, Nairobi – E.G. Nderitu, senior Principal Magistrate on 11<sup>th</sup> February, 2014)*

**RULING**

This is an application for bail pending the hearing of an appeal by the applicant. The applicant was charged with four counts of forgery contrary to Section 349 of the Penal Code. He was also charged with four counts of stealing by servant contrary to Section 281 of the Penal Code. He denied all the offences but after a full trial he was convicted and sentenced to two years imprisonment each in respect of count 1, 2,3 and 4 and 4 years imprisonment each in respect of counts 5, 6, 7 and 8. Sentences were ordered to run concurrently.

The application is opposed and both learned counsel for the applicant and the respondent have filed written submissions. I have read all the material before me including the cited authorities. At this stage it is the applicant's duty to persuade the court that there are exceptional circumstances and that his appeal has overwhelming chances of being successful.

The proceedings annexed to the application are detailed in content. The court is however able to discern that the applicant who was then employed by Barclays bank of Kenya Limited, and at the time of the alleged offences was attached to the Karen Branch may have handled all the transactions relating to the charges herein.

In particular, exhibits 1 to 54 were directly attributed to the applicant. There were other exhibits relating to his assigned cashier number 15 which also tended to implicate him. The denial by several victims of transactions in this matter tended to direct all the blame to the applicant. His appeal is yet to be heard and I am being very cautious in handling this application otherwise to delve any deeper may prejudice his appeal. For now I am able to say that the applicant has not demonstrated exceptional circumstances to persuade the court that his appeal has overwhelming chances of being successful.

His application is therefore declined. One of the fears he expressed in the application is that he is likely to serve sentence before his appeal is heard. I note that the proceedings which have been annexed to the application are certified and therefore ready to be used in his appeal. His learned counsel can facilitate the processing of the record so that his appeal is heard without delay.

**SIGNED DATED and DELIVERED** in court this **16<sup>th</sup>** day of July, **2014**.

**A.MBOGHOLI MSAGHA**

**JUDGE**