



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL APPEAL NO. 177 OF 2013**

**ESTHER MWONGELI MULE.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(Being an appeal from the original sentence and conviction in Makindu Principal Magistrate Court Criminal Case No. 887 /2013 by Hon. M.O. Kizito on 28/7/2013)*

**RULING**

1. **Esther Mwangeli Mule**, the Applicant was charged with the offence of stealing by servant contrary to Section 281 of the Penal Code. She pleaded guilty to the charge. She was convicted and fined Kshs. **100,000/=**. In default she was to serve two (2) years imprisonment.
2. Being aggrieved, she has appealed against the conviction and sentence. She now seeks to be released on bail pending appeal. The application is premised on grounds that;-
  - The appeal is arguable with very high chance succeeding;
  - The Applicant will serve an illegal sentence for an offence she did not commit;
  - She is traumatised and suffers from an unknown disease as a result of loss of sleep and appetite.
3. **Mr. Konya**, counsel for the applicant submitted that the appeal has an overwhelming chance of success because the plea was equivocal as the theft had not been demonstrated.
4. The application was opposed by **Mr. Mwangi**, the learned State Counsel. Relying on the authority of **Dominic Karanja versus Republic KLR 612**, he argued that the appeal had no chance of succeeding. He stated that the appeal had no chance of succeeding as the plea entered was unequivocal. The presumption of innocence was not available to the applicant. Further, that there were no special circumstances disclosed that would be relied on. No evidence of disease had been presented and the Applicant had not served a substantial part of the sentence.
5. I have carefully considered rival submissions by both the defence and State counsels. It is true that the applicant pleaded guilty to the charge of stealing. Looking at the manner the plea was taken I am not persuaded that the appeal has an overwhelming chance of success. It has been alleged that the applicant is ailing from an unknown disease. It has not been demonstrated if she has sought any treatment. She was given an option of paying a fine. This gives her an opportunity of not serving the two (2) years imprisonment. The appeal may be fast tracked, which means that it can be heard prior to the substantial part of sentence being served.
6. From the foregoing, the applicant has failed to demonstrate why the order sought should be granted. The application is therefore dismissed.

**DATED, SIGNED and DELIVERED at MACHAKOS this 4<sup>TH</sup> day of OCTOBER, 2014.**

**L.N. MUTENDE**

**JUDGE**