



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.417 OF 2014

SUSAN JOYCE

OMWAKWE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Susan Joyce Omwakwa is an Advocate of the High Court. She was charged with two offences, that is, **Forgery** contrary to **Section 345** as read with **Section 349** of the **Penal Code**. The particulars of the offence were that on 17<sup>th</sup> September 2012, jointly with others not before court, with the intent to defraud, she forged an Equity Bank Cheque No.001922 for Kshs.62,860,000 in the name of Omwakwe & Associates purporting it to be valid and genuine cheque issued by National Irrigation Board. She was also charged with **Attempted Stealing** contrary to **Section 275** as read with **Section 389** of the **Penal Code**. The particulars of the offence were that on 19<sup>th</sup> September 2012 at Equity Bank KNUT House Branch, she attempted to steal Kshs.62, 860,000/- the property of Equity Bank Limited. After full trial, the Applicant was convicted of both counts. The Applicant was fined a sum of Kshs.1,000,000/- each in respect of both counts or in default she was to serve fifteen (15) months imprisonment. She is currently serving the custodial sentence.

The Applicant was aggrieved by her conviction and sentence and has duly filed an appeal to this court. Contemporaneous with filing an appeal, the Applicant has filed an application pursuant to **Section 356** and **357** of the **Criminal Procedure Code** seeking to be released on bail pending the hearing of the appeal. The grounds in support of the application are contained in the affidavit of the Applicant and another affidavit sworn on her behalf by Susan Nyang, her advocate. The Applicant states that since her incarceration, she had developed a medical ailment which cannot be treated while she is in prison. She told the court that if she remains in prison she would lose her practice, and further to that, being a single parent, there is no one to take care of her young child. The Applicant further states that she has an appeal with a high likelihood of success. Ms Aluda for the State submitted that the evidence adduced against the Applicant was so overwhelming that the chance that she would succeed in her appeal was remote. However, taking into consideration the medical condition of the Applicant, she conceded to the application that the Applicant be released on bail pending appeal on condition that appropriate bail terms be fixed and further that a hearing date be set for the hearing of the appeal.

The principles that this court is required to take into account in considering whether or not to release the Applicant on bail pending appeal are well settled. In **Ademba –Vs- Republic [1983] EA 442**, the Court of Appeal held that bail pending appeal may only be granted if there are exceptional or unusual circumstances and further where the Applicant establishes that the appeal has a likelihood of success. Another factor which the court is required to take into account is the period that the Applicant has been sentenced to serve. This factor is taken into consideration to prevent the possibility that the Applicant may serve his sentence before the appeal is heard. In the present application, the Applicant was sentenced to serve fifteen (15) months imprisonment in default of paying the fine. The Applicant is ailing. The prison doctor has indicated that her ailment can only be attended to by specialist doctors who are not available in

prison. The Applicant is also a single mother who has a young child to take care of. In the opinion of this court, the above facts are exceptional circumstances that this court considers to be appropriate to grant the Applicant bail pending appeal. As regard whether the intended appeal raises grounds which are overwhelming, this court will hold its views pending the hearing of the appeal.

In the premises therefore, the Applicant is hereby released on bail pending appeal on condition that she deposits a cash bail of Kshs.500,000/- or posts a bond of Kshs.1,000,000/- with one surety of the same amount. Another condition is that the Applicant must prepare, file and serve her record of appeal upon the Director of Public Prosecutions within sixty (60) days of the date of delivery of this Ruling. She shall also fix the hearing of the appeal within six (6) months of the date of this Ruling. It is so ordered.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER 2014**

**L. KIMARU**

**JUDGE**