

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.412 OF 2014

BONIFACE MUTUNGA MUNYASIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Boniface Mutunga Munyasia was charged with eleven (11) counts of **forgery** contrary to **Section 349** of the **Penal Code**. The particulars of the offence were that on various dates, with the intent to defraud, the Applicant forged various customers' transaction vouchers purporting them to be genuine and valid National Bank Customer Transaction Vouchers issued by National Bank, Harambee Avenue Branch. He was further charged with the offence of **stealing** contrary to **Section 275** of the **Penal Code**. The particulars of the offence were that on various dates between 13th November 2009 and 20th June 2010, being an employee of Beryl Anyango Ouma Advocates, together with others not before court, stole Kshs.1,853,720/- the property of said Beryl Anyango Ouma Advocates. When the Applicant was arraigned before the trial court, he pleaded not guilty to the charge. After full trial, he was acquitted of the eleven (11) counts of forgery. He was however convicted of the charge of **theft**. He was sentenced to serve three (3) years imprisonment. He has appealed to this court challenging both his conviction and sentence.

Pending the hearing and determination of the appeal, he pleads with the court to release him on bail. He states that his appeal has overwhelming chance of success. He undertook to abide by any terms that the court may impose to secure his release on bail pending appeal. He was of the view that the offence did not involve any unusual or exceptional circumstances. The application is supported by the annexed affidavit of the Applicant. The application is opposed. The prosecution stated that the Applicant had not demonstrated that the appeal had overwhelming chance of success or that the Applicant would have served a substantial part of his sentence before the appeal is heard. The prosecution reiterated that the evidence that was adduced by the prosecution overwhelmingly supported the conviction of the Applicant. In the premises therefore, the prosecution urged the court to dismiss the application.

This court has carefully considered the facts of this application. For the Applicant to succeed in his application for bail pending appeal, he has to establish that the intended appeal has overwhelming chances of success. He must also establish that there are exceptional or unusual circumstances that this court will be compelled to consider in order to release him on bail pending appeal. Where the custodial sentence imposed on the Applicant is short, the court may consider releasing the Applicant on bail pending appeal in order not to render his appeal nugatory. In the present application, this court's cursory perusal of the judgment delivered by the trial court, prima facie, indicates that the Applicant will face an uphill task in his bid to overturn his conviction. This court is not persuaded that the appeal filed by the Applicant has an overwhelming chance of success. The Applicant did not establish the existence of any unusual or exceptional circumstances to warrant this court to release him on bail pending appeal.

In the premises therefore, this court holds that the Applicant failed to establish a case for this court to release him on bail pending appeal. His application is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF DECEMBER 2014.

L. KIMARU

JUDGE