



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**MISCELLANEOUS CRIMINAL APPLICATION NO. 169 OF 2012**

JOAKIM NALO .....APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

**RULING**

1. This application which has been brought by way of Notice of Motion dated 5<sup>th</sup> March 2012, mainly seeks that the court be pleased to admit the applicant to bail pending the hearing of **Cr. App 98/12**. Secondly, that there be an order for stay or suspension of execution of sentence in **Cm Cr. Case No. 806/2010, Nairobi** pending the hearing of the appeal.
2. Mr. Otollo, learned counsel for the applicant, relied on the grounds of appeal and on the affidavit of Christopher Omulele who was the Advocate on record. In that appeal, it was argued that there were inconsistencies in the witness' evidence, and an example was given of **PW3** stating that he arrested the applicants at 5.00 p.m. in his statement, while in his evidence he stated that he arrested them at 7 p.m.
3. Further that although **PW3** stated that he used the description of the applicant given by an informer to arrest the applicant, the said informer did not testify and the said description was not given to the trial court. Mr. Otollo averred that **PW3** could not have arrested the applicant at 7.p.m., when it was dark using description given by an informer.
4. The learned counsel further submitted that no member of the public testified, and that there was therefore, no danger in releasing the applicant while he prosecutes his appeal, as he poses no risk to the public.
5. Mr. Otollo argued that the defence evidence being that an army officer gave the bag containing the ammunition to the applicant, the trial court should have considered any other person who might have had the bag at the time of arrest.
6. Miss Ngetich, learned State Counsel opposed the application stating that the intended appeal had

no chances of success, and that the offence being of a serious nature, there were high chances of the applicant not attending court if bail was granted. She further submitted that the applicant was of a great risk to the security of the society if released, given the nature of the offence for which he was convicted.

7. The principle consideration in an application for bail pending appeal is, the existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail. If it appears prima facie from the totality of the circumstances, that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions of granting bail will exist.
8. There is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the intended appeal which could result in the appeal being allowed. What is to be considered are the particular circumstances and weight and relevance of the points to be argued. See the case of **Jivraj Shah vs. Republic [1986] LLR 605.**
9. I have perused the evidence and judgment from which the intended appeal emanates as well as the submissions from the applicant and the respondent. Without delving into the merits and demerits of the appeal, I am not persuaded that the applicant has demonstrated that his appeal has overwhelming chances of success. Neither do I discern any exceptional or unusual circumstances upon which I can conclude that it is in the interest of justice to grant the bail sought.
10. It has been argued for the applicant that he is married and has children, a matrimonial home and property and that this should speak in his favour. In the case of **Dominic Karanja v Republic [1986] KLR pg. 612,** the Court of Appeal stated that a solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal. The intended appeal must in itself be shown to have overwhelming chances of success.
11. For those reasons and without appearing to determine the merits and demerits of the application, I dismiss it.

**SIGNED DATED and DELIVERED in open court this 2<sup>nd</sup> day of October 2013.**

**L. A. ACHODE**

**JUDGE**