

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI(MILIMANI LAW COURTS)

MAURICE ALODOUS OPAR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The Applicant/Appellant was charged in four counts with the offence of obtaining money by false pretences contrary to **Section 323** of the **Penal Code**, in Kibera Criminal Case 3430 of 2007. Ultimately, he was acquitted on count III while he was convicted on Counts 1, II and IV respectively. He was sentenced to serve 18 months on count 1, 12 months on count II, and 2(two) years in prison on count IV respectively. The sentences were ordered to run concurrently from 17th November, 2011.
2. While the Applicant has appealed against both conviction and sentence. He seeks an order admitting him to bail pending appeal on the premise that his appeal invites overwhelming chances of success.
3. The upshot of the submission of Mr. Kang’ahi, learned counsel for the appellant is that the appeal is not only arguable, but carries with it overwhelming chances of success. To therefore mitigate on the Appellant/Applicant suffering part, if not the whole of the sentence, he prayed that the court be pleased to stay sentence and accordingly admit the applicant to bond/Bailpending the hearing of his Appeal.
4. Mr. Muriithi the learned state counsel, in his written submissions dated 20th December 2011 filed on behalf of the respondent argued that there was overwhelming evidence on record in support of both conviction and sentence. That there was nothing to warrant the grant of the orders sought since the prosecution’s evidence was watertight. He urged the court to dismiss the application.
5. His supplementary affidavit dated two months later on 14th February 2012 therefore left me a little perplexed. In a complete turn around, the learned state counsel conceded the appeal on account of the length of the sentence imposed upon the appellant, and the appellant’s own submission that the weight of the evidence does not support the conviction.
6. The principles to be considered in an application for bail or bond pending appeal are now settled. In the case of **Jivraj Shah vs. Republic [1986] LLR 605** the Court of Appeal stated *inter alia* that
 - “1. ***The principle consideration in an application for bail pending appeal is, the existence of exceptional or unusual circumstances upon which the court of appeal can fairly conclude that it is in the interest of justice to grant bail.***
 2. ***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.***
 3. ***The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.***”
7. I have perused the evidence and judgment on record, as well as the submissions from the appellant and the respondent. Without delving into the merits and demerits of the appeal, I am not persuaded that the

appellant 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.

8. For the foregoing reasons, I therefore find that the application before me is lacking in merit and decline to grant it. The application is dismissed.

SIGNED DATED and DELIVERED in open court this **1ST** day of **MARCH, 2012.**

L. A. ACHODE
JUDGE