



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT BUNGOMA**

**CRIMINAL APPEAL NO.118 OF 2010**

*(Appeal from original BGM CM CR. No.1677 of 2008)*

**DAVID MAMATI WANJALA.....APPELLANT**

**~VRS~**

**REPUBLIC.....RESPONDENT**

**RULING**

This is an application dated 8/11/2010 seeking for release of the Appellant David Mamati Wanjala on bail pending appeal and stay of sentence pending hearing and determination of the appeal.

The Appellant was convicted of the offence of handling stolen goods contrary to section 322 (1) of the Penal Code and sentenced to serve three (3) years imprisonment.

The grounds relied on are that the Appellant is sickly and requires urgent medical attention which may not be available at Bungoma G.K. Prison where he is remanded. Secondly, that the appeal has not been admitted for hearing and it may take time to be heard and determined. Mr. Onchiri argued the application and submitted that the evidence relied on to convict. The Appellant was not cogent. Further that the magistrate erred in reducing a charge of robbery with violence to one of handling stolen goods.

The application was opposed by the state on grounds the court had power to convict on a lesser charge under section 179 of the Criminal Procedure Code. Further that the appeal has no chances of success.

This court was referred to some authorities by Mr. Onchiri which I have perused and appreciated the holdings. In the case of ***GIRDHAR DHANJI -VRS- REPUBLIC***, the court held that delay before the appeal is heard is a good ground to grant bail pending appeal. In the case of ***ADEMBA VRS REPUBLIC*** the Court of Appeal held that bail pending appeal may only be granted where there are exceptional

circumstances and that the likelihood of success is a factor to be taken into consideration.

I have perused the proceedings of the lower court and the grounds relied on herein. As for exceptional circumstances, I do not find any evidence to support that in this application. The Appellant says he is sick suffering from various ailments. However, the medical record is not annexed to this application.

I would agree that the appeal is arguable and that it is likely to take sometime before it is heard and determined due to the work load in this station. For these two reasons, I allow the application for bail pending appeal. The Applicant is hereby released on bond of Ksh.20,000/= with a surety of a similar amount pending the hearing and determination of the appeal.

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**F. N. MUCHEMI**

**JUDGE**

Ruling dated and delivered on the 3<sup>rd</sup> day of March, 2011 in the presence of the Applicant, Mr. Kakoi for Mr. Onchiri and the State Counsel, Mrs Leting.

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**F. N. MUCHEMI**

**JUDGE**