



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KARANJA, WARSAME, GATEMBU, J.J.A.)**

**CRIMINAL APPLICATION NAI NO. E008 OF 2020**

**BETWEEN**

**MARY NGECHI NG'ETH.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

**(An application for bail or bond pending the hearing of the appeal against the judgment of the**

**High Court of Kenya at Nairobi (Onyiego, J) delivered on 23rd September, 2020**

**in Anti Corruption Appeal No. 9 Of 2018 Consolidated with High Court**

**Anti-Corruption Criminal Appeals No. 10, 11 and 12 of 2018)**

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**RULING OF THE COURT**

1. The applicant herein was convicted before the Chief Magistrate's Court of the offence of knowingly giving a misleading document to principal contrary to section 41(2) as read with section 48 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 and sentenced to 3 years imprisonment. Consequently, the applicant moved to the High Court on a first appeal seeking orders to quash the conviction, set aside the sentence and consequently acquit the applicant. The High Court (Onyiego, J.) in a judgement delivered on 23rd September 2020 in High Court Anti-Corruption Appeal No. 9 of 2018 upheld conviction and confirmed sentence against the applicant.

2. The applicant moves this Court by a Notice of Motion dated 23rd November 2020 brought under section 3, 3A, 3B of the Appellate Jurisdiction Act and Rule 5 (2) (a) of the Court of Appeal Rules, 2010 seeking orders;

- a. That, the hearing of the instant application and the intended appeal be expedited;
- b. That, the applicant be admitted to bail/bond pending the hearing and determination of the appeal;
- c. That, the appeal be heard on priority basis and at the earliest opportunity.

3. At the plenary hearing, Mr. Wandugi learned counsel appeared for the applicant while Mr. Njeru was present for the respondent. Mr. Wandugi submitted that the applicant is a single mother to a minor, with special medical needs that she suffers from occasional vertigo and blood pressure. The applicant deposes that she is apprehensive that in her absence, the minor's best interests and her own health will be greatly prejudiced. She produced medical reports in support of her averments. In a nutshell, the applicant contends that if bail is denied she will most likely have served a substantial part of the sentence by the time the appeal is heard and determined. As a result therefore, the applicant seeks the intervention of this Court to exercise its discretion in her favour. Mr. Njeru for the State did not oppose the application on the grounds that the evidence in favour of the orders sought is overwhelming as the applicant's son is in a special school and therefore needs parental attention.

4. We have considered the material placed before us. The issue arising for our determination is whether the applicant has demonstrated exceptional circumstances which would justify the release of the applicant on bail pending the hearing of her appeal. The Court's discretion to release a convicted person on bail pending the determination of the appeal is provided under Rule 5(2) (a) of the Rules as hereunder;

**“5 (2) Subject to sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may -**

**a. in any criminal proceedings, where notice of appeal has been given in accordance with rule 59, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal.”**

5. However, in exercising such discretion, the Court has to bear in mind that a person who has been convicted by a competent court has lost the presumption of innocence conferred on him/her by the Constitution and that during the hearing of the pending appeal, the burden would be upon the convicted person to show that the conviction was wrong and the sentence illegal. Therefore, as it has been stated time and time again bail pending appeal will only be granted in rare and exceptional circumstances - See *Michael Otieno Ademba vs. Republic (1982-88) 1 KAR 263* and *Abdi vs. Republic [1991] KLR 171*. (See. *Issack Tulicha Guyo vs. Republic [2011] eKLR*).

6. The simple and straight forward question for us is whether the applicant has demonstrated the existence of exceptional circumstances, which would entitle him to be released on bond/bail. In determining the application, this Court takes into consideration the nature of the offence, legality or otherwise of the conviction under sentence, there exists material or evidence to conclude that it is in the interest of justice to grant bail.

7. The applicant has put forward primarily the issue of her son who says has special medical needs. It is clear to us that the son is in a special school and there is no evidence that he has been neglected or urgently requires parental care. The second issue raised is that the applicant suffers from occasional vertigo and blood pressure. There is no *prima facie* evidence that the condition of the applicant cannot be managed at the prison.

8. Consequently we find that there are no exceptional and/or unusual circumstances to warrant the granting of orders for bail pending appeal. The application has no merit and the same is dismissed with no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MAY, 2021**

**W. KARANJA**

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**JUDGE OF APPEAL**

**M. WARSAME**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU FCIArb**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**