



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAHURURU**

**CRIMINAL APPEAL NO.194 OF 2017**

**WILSON KIPROP KORIR.....APPLICANT**

**- V E R S U S -**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

**Wilson Kiprop Korir** was convicted by **Hon. Mukenga** on 18/10/2017 for the offence of ***stealing stock Contrary to Section 278 of the Penal Code.***

He was sentenced to serve 2 years imprisonment. He is aggrieved by both the conviction and sentence and has filed this appeal.

By the Notice of Motion dated 20/11/2017, he applies to be admitted to bond or Cash Bail on reasonable terms pending the hearing and determination of the appeal.

The grounds upon which the application is premised are that the appeal is arguable and has overwhelming chances of success; that the appellant is likely to serve a substantial part of the sentence of 2 years before the appeal is heard; that he has a family of a wife and three teenagers in High School.

The application is also supported by the affidavit of the applicant sworn on 20/11/2017. **Mr. Muthee** counsel who argued the application reiterated the said grounds.

The state was not opposed to the application.

In an application for bail pending appeal the primary consideration is whether the applicant's appeal has overwhelming chances of success and that principle has been discussed in many decisions. See ***Ademba v Republic (1983) ICLR 442; Jivraj Shah v Republic (1986) KLR 605*** and ***Somo v Republic (1972) EA 476***. In ***Dominic Karanja v Republic 1986 KLR 612***, the Court of Appeal set down the pre conditions for grant of bail pending appeal as follows:

***(a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;***

**(b) The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners;**

**(c) 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;**

**(d) Upon considering the relevant material in this case, there was no over whelming chance of appeal being successful.**

As held in the above cited case, reasons like having a family which the applicant feeds for or illness, is not a reason for grant of bail pending appeal.

I have had a perusal of the judgment of the court and I cannot say that the prosecution case is hopeless or that there was no basis for the conviction.

The appellant was sentenced to 2 years imprisonment on 18/10/2017. So far, he has served only 2 months. The proceedings are not yet typed and the record of appeal is yet to be prepared.

I do agree that the applicant is likely to serve a substantial part of the sentence before the record of appeal is prepared and the appeal heard and determined. The applicant may suffer prejudice if the appeal is ultimately determined in his favour. For that reason alone, I do grant the prayer sought in the application. The applicant may be released on bond of Kshs.150,000/=, with one surety of like sum and cash bail of Kshs.30,000/=.

**Dated, Signed and Delivered at NYAHURURU this 20<sup>th</sup> day of December, 2017.**

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**R.P.V. Wendoh**

**JUDGE**

**Present:**

Mr. Mutembei – for prosecution

Mr. Mathee h/b for Mr. Morintat

Applicant – present

Elizabeth – court assistant