



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE 40 OF 2012**

**CATHERINE**

**KARAMBU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**T**

**RULING**

The appellant has filed a notice of motion dated 14<sup>th</sup> May 2012 pursuant to Section 357 of the Criminal Procedure Code, Cap 75 Laws of Kenya ( and all other enabling provisions of the laws).

The said application seeks the following orders:

- (a) That this application be certified as urgent and it be heard on priority basis in the first instance.**
- (b) That the appellant/applicant be admitted to bail, pending hearing of the appeal herein.**
- (c) That this honourable court do make any other order it deems fit in the circumstances.**

During the hearing of the application, the appellant’s Counsel Mr. Kariuki submitted that they are relying on the grounds on the face of the motion and affidavits of the appellants who was charged in **Maua CM Criminal Case No. 2412 of 2010** for being in possession of narcotic drugs. After the trial the appellant was found guilty and was sentenced to one year’s imprisonment. In addition to the above the learned Counsel also submitted that in the appeal they have challenged the conviction of the appellant. Besides the above he also submitted that in order to demonstrate that the appellant has an arguable appeal they have enclosed the proceeding and judgment. Apart from the above the learned Counsel also submitted that the prosecution called two witnesses who were the investigating officer and an officer from the government chemist. The learned Counsel contended that it was only the investigation officer who gave evidence to try to connect the appellant with the offence. Further to the above the learned

Counsel also submitted that the appellant testified and denied that where the substances were found was not her kiosk. In addition to the above he also pointed out that the learned magistrate made a finding that the only evidence on record was the word of the investigating officer against that of the appellant. Later, the trial magistrate stated that he considered the evidence of the investigating officer as more believable however the learned magistrate submitted that there was contradiction in the evidence of the investigating officer which was unreliable. He contended that the same relates to the quantity of the substances recovered. He also pointed out that an inventory was adduced in the evidence together with an exhibit memo form. The document states that the investigating officer recovered two kilos of cannabis sativa. However, what was submitted for submission was 200grams. He paused the following question. "**Was that what was recovered from the accused person**" Subsequently the learned trial magistrate resolved that issue by stating that it was not fatal since the investigating officer never weighed the substance. He contended that the same was an error since there is a big difference between 2 kgs and 200 grams. Secondly he also submitted that there was no evidence to connect the appellant to the kiosk. He was of the opinion that the contradictions opt to have been resolved in favour of the appellant. That apart he also submitted that the appellant is likely to serve a substantial part of the sentence in custody before the appeal is heard. By the time the learned Counsel was making submission the appellant had already served 3 months. On the basis of the above the learned Counsel has urged this court to grant the appellant bail pending appeal.

On the other hand the application has been opposed by Mr. Motende who appeared for the stated. According to the learned state Counsel the appellant was sentenced to one year imprisonment. He also contended that he wished to persuade the court to refuse granting bail pending appeal. That is because of the short sentence that was imposed. He concluded his submissions by urging this court to grant an early hearing date.

This court has carefully considered the opposing submissions by the learned Counsels. Unfortunately the learned State Counsel did not give any reasons why he was opposing the application apart from the fact that the sentence that was imposed was short. Apparently the appellant's Counsel has raised several issues relating to the merits of the appeal. This court has not had the benefit of any opposing submissions by the learned State Counsel. It is also significant to note that the State has not filed any replying affidavit in opposition to the application. At this stage it is not clear whether the State may raise any substantial issue during the hearing of the appeal. Given the above submissions and the proceedings I hereby wish to concede to the application for bail pending appeal. In that regard I hereby direct that the accused be released on cash bail of Ksh.200,000/. Alternatively the accused may be released on a bond of Ksh.200,000/ with a surety of similar amount.

This appeal will now be heard on 9<sup>th</sup> October, 2012.

Those are the orders of this court.

**MUGA APONDI**

**JUDGE**

Ruling read, signed and delivered in open court in the presence of

Muriuki for Kariuki M. Defence Counsel

Motende State Counsel

**MUGA APONDI**

**JUDGE**

**26<sup>TH</sup> JUNE, 2012**



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