



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC CRIMINAL APPLICATION NO. E373 OF 2021

GEOFFREY MWANGI MURUNGI.....1ST APPELLANT/APPLICANT

IBRAHIM CHOME NGALA.....2ND APPELLANT/APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR/RESPONDENT

(Being a ruling from the judgement, conviction and sentence of the Hon. Kithinji, A.R , CM,

dated 21/10/2021 in the Chief Magistrates' Court at Makadara in Criminal Case No. 1634 of 2015,

Republic v 1. Geoffrey Mwangi Murungi 2. Ibrahim Chome Ngala)

RULING

The applicant moved this court pursuant to the provisions of sections 349 and 357, of the Criminal Procedure Code (Cap 75) Laws of Kenya and all other enabling provisions of the Law, under certificate of urgency, seeking the following orders.

1) Spent

2) An order directing that the applicant be released on cash bail in the same terms of shs 30,000/- as they were during the hearing at the trial court or on such other terms as this court may deem fit; pending the hearing and determination of the intended appeal against the magisterial judgement and sentence.

3) An order directing that the costs of this application be provided for.

The application is supported by 13 grounds that are set out on the face of the chamber summons dated 25th October 2021.

It is also supported by an eighteen paragraphs supporting affidavit of the applicant.

In view of what I will state below, I find it unnecessary to set out both the grounds and the averments of the affidavit.

The applicable law.

An aggrieved person who is desirous of filing an application for his release on bail pending the hearing and determination of his appeal must in terms of section 349 of the Criminal Procedure Code (Cap 75) of the Laws of Kenya, file his appeal within 14 days. If the 14 days have lapsed, such person may apply to the High Court to extend the said period within which to file the appeal.

It is only after the aggrieved person has filed an appeal in the High Court, that he may apply for his release on bail pending the hearing and determination of his appeal; as directed by section 357 (1) of the Criminal Procedure, supra, whose provisions read as follows:

“After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:

Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal the refusal to the High Court and, notwithstanding anything to the contrary in section 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.”

It is clear from the foregoing that an aggrieved person who is applying for bail pending the determination of his appeal must as a condition precedent first file his appeal, before filing an application for his release bail pending the hearing and determination of his appeal.

It is equally clear that the applicant herein has not filed an appeal in the High Court against the judgement and sentence of the lower court. It therefore follows that his application is incompetent. It also follows that the Criminal Procedure Code does not recognize what the applicant herein has termed an “intended appeal” and such characterization of his application is equally incompetent.

In the premises, I find that his application fails on account of being incompetent with the result that it is hereby struck out with no order as to costs.

For costs in criminal matters unless authorized by statute are generally not payable. However, the High Court has an inherent power to order for payment of costs if the circumstances of the case so warrant such as where the application amounts to an abuse of the court process.

It is for the foregoing reasons that I found it unnecessary to set out the grounds and the averments in support of the application.

RULING SIGNED, DATED AND DELIVERED THROUGH VIDEO CONFERENCE IN OPEN COURT AT NAIROBI THIS 27TH DAY OF JANUARY 2022.

J. M. BWONWONG’A

JUDGE

IN THE PRESENCE OF-

MR. KINYUA, COURT ASSISTANT

MR. ODAWA FOR THE APPLICANT

MR. KIRAGU FOR THE RESPONDENT.