



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL APPEAL NO 43 OF 2018

GEORGE SIRONKA KATAMOKI.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an appeal from the original conviction and sentence dated 17/10/2018 in Criminal Case No 651 of 2013 in the Chief Magistrate's Court at Narok, Republic v George Sironka Katamoki)

RULING

The case for the applicant

1. Pursuant to the provisions of section 356 and 357 of the Criminal Procedure Code (Cap 75) Laws of Kenya, the applicant has applied for the following orders.

1. An order to stay the execution of the judgement and sentence of the trial court delivered on 5th November 2018 pending he hearing and determination of the instant appeal.
2. In the addition, an order is sought to admit the applicant to reasonable bail until the instant appeal is heard and determined.
3. An order of stay directing that the title deed in issue should not be returned to the land registrar until the hearing and determination of the instant appeal.

2. The appeal is supported by four grounds that are set out on the face of the notice of motion dated 5th December 2018. The major grounds are as follows. The appellant is aggrieved by the decision of the trial court. That if the title deed is returned to the land registrar and changes are made to it, the appeal will be rendered nugatory. The appellant should be given an opportunity to canvass his appeal before any drastic action is taken regarding the land.

3. In addition to the foregoing, the application is supported by a ten paragraphs supporting affidavit of his counsel (Mr. Gachoka Mwangi). The major averments are as followings. The appeal has high chances of success and that if the sentence imposed upon the appellant is executed, his appeal will be rendered nugatory. He has averred that there are many loop holes in the prosecution case.

The case for the respondent

4. Counsel for the respondent has opposed the application on the basis that it does lack overwhelming chances of success.

Issues for determination.

5. In the light of the affidavit evidence and the applicable law the following are the issues for determination.

1. Whether or not the applicant has demonstrated that his appeal has overwhelming chances of success. 2. In the alternative, such an applicant has to demonstrate that there are unusual or exceptional circumstances in his appeal.

Issue 1

6. I have considered the affidavit evidence of the applicant in the light of the applicable law. Counsel for the applicant has averred that there are many loop holes in the prosecution case without specifying them. Counsel has also not demonstrated that the appellant's appeal has overwhelming chances of success. In the circumstances, I find that the applicant has failed to discharge the burden of demonstrating that his

appeal has high chances of success.

Issue 2

7. The applicant has also failed to demonstrate that his appeal involves unusual or exceptional circumstances.

8. The upshot of the foregoing is that the applicant appeal fails with the result that it is hereby dismissed except that there will be order of stay of execution in respect of the revocation of the title deed pending the hearing and determination of the instant appeal.

Ruling signed, dated and delivered in open court at Narok this 29th day of July, 2019 in the presence of Mr. Kilele holding for Mr. Gachoka for the applicant and Mr. Omwega for the respondent.

J. M. Bwonwonga

Judge

29/07/2019