

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL CASE NO. 97 OF 2017

PETER KIMATHI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. By a Chamber Summons Application dated 18th September, 2017 and brought pursuant to **Section 357 of the Criminal Procedure Code Cap 75 of the Laws of Kenya**, the Applicant has sought to be granted bail pending the hearing of his appeal to this Court.

2. The applicant's case is that he was tried, convicted and sentenced to life imprisonment by the trial court on 31st August, 2018 in the **Meru Criminal Case Number 475 of 2015**. The applicant contended that being dissatisfied with the judgment and sentence he had lodged an appeal vide **High Court Criminal Appeal No. 97 of 2017** and that given the time it will take to hear the appeal and the nature of the sentence, if successful, the Appeal will be rendered nugatory. The applicant further contended that the appeal herein had high chances of success and that he suffers from a diabetic medical condition which requires him to see a specialist twice a month in addition to special diet which was not available in prison.

3. Mr. Mutuma, Learned Counsel for the applicant relied on the Affidavit in Support and further submitted that the applicant was out on bond during the trial. That he can be granted the same bond terms. Mr. Mungai, Learned Counsel for the State opposed the application. He submitted that it had not been demonstrated that the appeal had any chances of succeeding.

4. This is an application for bail pending appeal. The appellant has already been convicted by a competent court and is already serving sentence. It is unlike an application for bail pending trial where an accused person is constitutionally entitled to bail. In the case of **Mutua v. Republic (1988) KLR 497, the Court of Appeal** observed as follows with regard to applications of this nature:-

“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal. It is not wise to set the applicant at liberty either from the point of view of his welfare or of the state unless there is a real reason why the court should do so.”

5. In **Somo v. Republic (1972) EA 476**, it was held that the test in an application for bail pending appeal is whether there are exceptional circumstances, the important being whether the appeal has overwhelming chances of being successful.

6. Applying this test, I have seen the Petition of Appeal filed by the appellant. I need not at this stage comment on it but suffice to state that it was not demonstrated that the appeal has overwhelming chances of success or that the conviction was without basis.

7. On the other hand, this court is sympathetic to the applicant on his health. However, his contention that his health has deteriorated as he suffers from diabetes, an illness which is not compatible with prison conditions is not unusual or exceptional. The court takes judicial notice that there are medical facilities in our prisons and the appellant can always seek medical attention to manage his condition. Illness *per se* is not an exceptional circumstance for purposes of bail pending appeal unless it is shown that the prison establishment may not attend to such condition. This is not the case here.

8. Taking into account the totality of the circumstances in this case, I find that the applicant has not met the conditions precedent for the grant of bail pending appeal. Accordingly, the application is dismissed. The appellant shall continue to serve the sentence meted out pending the hearing and determination of this Appeal.

DATED and DELIVERED at MERU this 25th day of January, 2018.

A. MABEYA

JUDGE