



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 55 OF 2018

(Arising from conviction and sentence by Hon. E. W NDEGWA in Githongo RMCRC No. 268 of 2018 delivered on 17th April 2018)

(CORAM: F. GIKONYO J.)

WILSON GITUMA NTUARA.....1ST APPELLANT

JULIUS MUTHOMI NTUARA...2ND APPELLANT

-Versus-

REPUBLIC.....RESPONDENT

RULING

Bail pending appeal

[1] Wilson Gituma and Julius Muthomi Ntuara were convicted for the offence of forcible detainer contrary to section 91 of the Penal Code and were sentenced to pay a fine of Kshs. 20,000 each and in default to serve six months imprisonment. They have filed an appeal against the conviction and sentence. Meanwhile, they have applied to be released on bail pending appeal. They have given reasons as to why they should be released on bond, namely;

- a. They are suffering in prison*
- b. They are sole bread winners;*
- c. Their appeal has high chances of success; and*
- d. They will have served the full jail term before the appeal is heard.*

[2] The first two reasons are not tenable in law as bail pending appeal will not be granted as a way of offering the appellant comfort or opportunity to carry out his social obligations. On this, I associate myself with the sentiment expressed in the case of **MUTUA vs. REPUBLIC (1988) KLR 497** by the Court of Appeal that;

“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.”

[3] I will not pretend to be cutting new ground in this area of law. The only potent reasons here are, that;

- i. Their appeal has high chances of success; See the case of SOMO V REPUBLIC (1972) EA 476; and*
- ii. They will have served the full jail term before the appeal is heard. See RAGHBIR SINGH LAMBA V REPUBLIC (1958) EA 337.*

[4] Applying the test, the appellants were sentenced on 17th April 2018 to pay a fine of Kshs. 20,000 each or in default serve a jail term of six months. They have stated that they are unable to raise the fine and may just have to serve the jail term. Today is 23rd day of May 2018. They

have already served one month and 7 days. More likely than not, they may have served the entire sentence by the time their appeal is heard. Second, without determining the prospects, the appeal, as deciphered from the petition of appeal, is not of a nature of a demurrer or one that can be dismissed on its face value. Accordingly, the appellants shall be released on cash bail of Kshs. 5,000. The appellants should however keep the peace in relation to the subject matter of the criminal case and this appeal. This appeal be fast tracked. It is so ordered.

Dated, signed and delivered in open court at Meru this 23rd day of May 2018

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F. GIKONYO

JUDGE

In the presence of:

Mr. Kaimenyi advocate for Appellant

Prosecutor – present

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F. GIKONYO

JUDGE