



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL APPEAL NO. 15 OF 2018

DAVID NYAGA IRERI.....APPLICANT/APPELANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. This is an application dated 15/05/2018 seeking for orders for release of bail pending hearing and determination of the appeal. The supporting affidavit of the applicant contains the grounds relied on.

2. The applicant was convicted by Runyenjes Senior Principal Magistrate's court of the offence of attempted murder and sentenced to life imprisonment. He was dissatisfied with the judgment and has not lodged this appeal.

3. The applicant depones that he is entitled to bail pending appeal citing Article 49(1) of the Constitution. He states that he is not a flight risk and will comply with all the conditions that the court may impose. He says the prosecution have no compelling reasons for him to be released.

4. The application opposed by the respondent. In the replying affidavit sworn by Leah Mati it is deposed that the applicant has not satisfied the requirement for granting bail pending appeal. The applicant has not demonstrated that his appeal has any chances of success. Neither has he shown that there exists exceptional circumstances in his case.

5. The applicant relies of Article 49(1)(h) in this application. He has already been tried and convicted of the offence of attempted murder contrary to Section 220(a) of the Penal Code.

6. Article 49(1)(h) of the Constitution provides:-

1. An arrested person has the right—

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

7. The applicant is now serving sentence of life imprisonment. Being convict, the article he relies on is not applicable in his case for it specifically refers to an "arrested" person. The submission on compelling reasons is also misplaced in this application for bond pending appeal.

8. I believe that this application is premised on Section 357 of the Criminal Procedure Code which provides:-

357(1)

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 against refusal to the High Court and, notwithstanding anything to the contrary in sections 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.

9. In the case of **BOKE CHACHA VS REPUBLIC High Court Kisii Criminal Appeal No. 244 of 2012**, it was held that the court in granting bail pending appeal must bear in mind the conviction stands until it is overturned on appeal.

10. The principles guiding courts in bail pending appeal was explained in the case of **DOMINIC KARANJA VS REPUBLIC [1986] KLR 612**. It was held that the applicant must prove that:-

i. The appeal has high chances of success.

ii. That there exists special circumstances that would justify granting bail.

11. In this application, the applicant has not shown that his appeal has any chances of success let alone high. He has not demonstrated that there exists any exceptional circumstances to justify granting of bail pending appeal. The sentence imposed on the applicant has not been said to be illegal or unreasonable.

12. The applicant even after conviction is still entitled to his constitutional rights and fundamental freedoms. It is important that his appeal be admitted and heard expeditiously.

13. I find the grounds in the affidavit of the applicant not relevant to this application for they are all premised on Article 49(1)(h) of the Constitution.

14. After due consideration of this application, I find that it lacks merit and is hereby disallowed.

15. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF JULY, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Mate for Respondent

Appellant in person