

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC APPLICATION NO.1 OF 2015

IBRAHIM ANUNGO AGORO.....APPELLANT

VRS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with the offence of robbery with violence contrary to section 296 (2) of the Penal Code in Bomet Criminal Case No.129 of 2011. He was convicted and sentenced to death in the judgment of T. O. Okello (SPM) dated 21st February 2012. He appealed to this court, and in its judgment dated 17th July 2014, the court (Sergon and Omondi, JJ) dismissed his appeal. He states that he has filed an appeal against this decision to the Court of Appeal.

2. In his undated application filed in court on 2nd February 2015, the applicant asks this Court to grant him bail pending appeal to the Court of Appeal. He thereafter filed written submissions which he asked the court to rely on in rendering its decision.

3. In his submissions, he urges the court to grant him bail pending appeal as he needs to get out and support his family which has been suffering since his incarceration. He states that he had been out on bail during his trial, and that he attended his trial. He will, therefore, attend court when required to during his appeal should he be granted bail pending appeal. He further submits that his family will be able to give security should the court grant his application for bail pending appeal.

4. The application is opposed by the state. Learned State Counsel, Ms. Mwangi, submitted that this court lacks jurisdiction to hear the applicant's application for bail pending appeal in the Court of Appeal. The state observed that the applicant was asking the court which dismissed his appeal to evaluate the evidence again on whether the evidence is sufficient to sustain a conviction at an appellate level. The state's submission was that the application is unprocedural and should be dismissed, and that the applicant should lodge his appeal in the Court of Appeal which has the jurisdiction to consider his application for bail pending his appeal before it.

5. In his reply, the applicant reiterated his plea to the court to grant him bail as his family was suffering, and as a Kenyan, he should not be denied bail.

6. I have considered the applicant's application to be granted bail pending his appeal to the Court of Appeal., as well as his written submissions. I note that the applicant had lodged an appeal which was considered by a two-judge Bench of the High Court and dismissed. The question is whether this court has the jurisdiction to consider the applicant's application for bail pending appeal to the Court of Appeal.

7. As I Understand the law to be, this court has no jurisdiction to entertain an application for bail pending appeal to the Court of Appeal in a matter in which an accused person has been charged, tried, convicted and sentenced to death. This is provided for under section 379(4) of the Criminal Procedure Code, which bars the release of such persons on bail pending appeal. It provides as follows:

(4) Save in a case where the appellant has been sentenced to death, a judge of the High Court, or of the Court of Appeal, may, where an appeal to the Court of Appeal has been lodged under this section, grant bail pending the hearing and determination of the appeal. (Emphasis added)

8. In this case, as noted earlier, the applicant was charged with the offence of robbery with violence under section 296(2) of the Penal Code and sentenced to death. He appealed to the High Court and his conviction and sentence were upheld. He has now appealed to the Court of Appeal.

9. Unlike an accused person who, under Article 49 of the Constitution, has a constitutional right to bail or bond unless there are compelling reasons for its being denied, a person who has been convicted and sentenced to death has no such right. In the circumstances, given the express provisions of section 379(4) of the Criminal Procedure Code, I find that the present application must fail. It is hereby dismissed.

Dated, Delivered and Signed at Kericho this 26th day of April 2017.

MUMBI NGUGI

JUDGE