



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NO. 48 OF 2016

NANCY NJERI NJAGI.....APPLICANT/APPELANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant Nancy Njeri Njagi has appealed against the judgment of Runyenjes Principal Magistrate Criminal Case No. 550 off 2015 whereas she was convicted of the offence of grievous bodily harm and sentenced to serve three (3) years imprisonment on 9/11/2016.
2. In her application for bail pending appeal dated 24/04/2017, the applicant seeks orders for bail relying on the grounds in the supporting affidavit and on the face of the application.
3. It is deposed that her appeal has overwhelming chances of success, that she has a young baby aged 3 years who requires motherly and medical care from the applicant.
4. The application was argued orally by the parties.
5. Ms. Wairimu for the applicant argued that the conviction was based on insufficient medical evidence. The examination was done about one week after the incident and the complainant referred to an ENT expert for management of her ruptured eardrum. However, the report of the expert was never received and neither were the treatment notes produced.
6. The application was opposed by the respondent relying on the replying affidavit of Ms. Manyal the prosecution counsel relying on the case of ***DOMINIC KARANJA VS REPUBLIC eKLR [1986]***. It was argued that the applicant did not satisfy the requirement for bail pending appeal. The test set out in that case is that the applicant's appeal must be one with overwhelming chances of success or that there exists exceptional circumstances in the case of the applicant to justify granting bail pending appeal.
7. The applicant in paragraph 7 of her affidavit cites Article 49(h) of the Constitution and states that the prosecution must demonstrate compelling reasons. This argument was premised on an application for bond pending trial.
8. The main requirement to be satisfied by the applicant in an application for bail pending appeal is that the appeal has overwhelming chances of success as was held in the ***Dominic Karanja case***. If the applicant cannot satisfy the requirement, he/she has a window of showing that there exists exceptional circumstances.
9. On the main requirement the applicant argues that the medical evidence was inadequate in that except

the P.3 form, the expert report and the medical notes were not produced. I have looked at the P3 and noted that it is assessed the nature of the injury as grievous harm in paragraph 5 of Part B. the injury was caused by human fists which is a blunt object. The P.3's finding were in conformity with the evidence on the probable type of person.

10. The P.3 form is the main document for a medical officer to show the injuries, their nature and extent as revealed by the examination. It is not in dispute that a medical officer fills the P.3 form using medical treatment notes. It is not a requirement that the treatment notes be produced and neither is the follow-up report by an expert on a patient mandatory.

11. The examination done a week after the injury is not fatal to the medical evidence unless the medical officer has a challenge in his examination in providing the required information. The applicant lost the presumption of innocence upon being convicted and the burden is now upon her on appeal to prove that she was wrongly convicted. The grounds relied on by the applicant do not demonstrate an appeal with overwhelming chances of success.

12. It is not in dispute that the applicant has a three year child. It was not revealed who was staying with the child. I am aware as a justice of peace in my visits to prison, that facilities of mothers with young children are available. Having a young child does not amount th an exceptional circumstance.

13. Motherly care and medical attention may still be provided to the child in prison. The applicant has been in prison for the last eight (8) months. If the child is staying with another caregiver, this will continue serving the child pending determination of the appeal.

14. The applicant may be apprehensive that her appeal may take long to be determined. This is not the case in this court since dates are available even in the next two months. This appeal was admitted on 7/03/2017 and the proceedings have been type. It is a matter of taking a date for hearing of the appeal as soon as possible.

15. I find the application lacking merit and it is hereby dismissed.

16. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 2ND DAY OF AUGUST, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Muriuki for Wairimu for applicant

Ms. Manyal for respondent

Applicant present in person