



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO. 45 OF 2017

ABDULKADIR ANOD DOLE..... APPELLANT

versus

REPUBLIC.....RESPONDENT

Consolidated with

CRIMINAL APPEAL NO. 46 OF 2017

EGAL BILAD ABDALLAH.....APPELLANT

versus

REPUBLIC.....RESPONDENT

RULING

1. This court by its ruling of 6th June 2017 declined to grant bail pending appeal to both the appellants. The appellants **Abdulkadir Anod Dole** and **Egal Bilad Abdallah** are husband and wife. The first appellant was convicted before the Nanyuki Chief Magistrate Court with the **offence of being in possession of government trophy namely 2 rhinoceros horns and one piece of elephant ivory contrary to section 42(1)(b) as read with section 52 (1) of the wildlife (conservation and management) Act Cap 376**. He was also convicted of **being in possession of implements of forgery contrary to section 367(b) of the Penal Code**. His wife Egal was convicted of **being in possession of government trophy namely 2 rhinoceros horns and one piece of elephant ivory contrary to section 42(1)(b) as read with section 52(1) of cap 376**.

2. It is that conviction and the subsequent sentence that the appellants have appealed before this court. Their appeal was finally heard on 31st July 2017 and before the court could set the date for the delivery of its judgment, the appellants through their learned counsel Prof Nandwa applied for reconsideration of their bail.

3. In his submissions learned counsel for the appellant submitted that there were changes in the appellant's circumstances which merited the courts reconsideration of their bail. He further submitted that the appellants had adversely been affected in their health by their custodial sentence. Further that because they were a husband and wife and had been taken away from their children it had adversely affected the family life. He posed a question, what if the appellant's appeal was successful, how would

the court account for the appellant's suffering in custody?

4. The application to reconsider the appellants bail was opposed by Mr. Tanui the Senior Principal Prosecution Counsel. Mr. Tanui submitted that no grounds had been brought forth by the appellants to justify the review being sought. He stated the medical notes which had been handed over to the court had not been the subject of the first application for appeal, and that accordingly they could not be used during this subsequent application.

ANALYSIS AND DETERMINATION

5. When this court entertained the first application for bail it was informed that the appellants were both elderly. Later during the hearing of the appellants appeal the court was informed from the bar by counsel appearing for the appellants that the first appellant is 77 years old and the second appellant is 49 years old. Since the court by its ruling of 6th of June 2017 considered the age of the appellants that issue cannot be revisited.

6. The main thrust of the appellants application for reconsideration of their bail was that they were suffering in custody and that the 1st appellant has a medical condition which require attention. The first appellant indeed has written a letter through the incharge at GK Prison Nanyuki which I shall reproduce as follows:-

“1. I’m a long term patient for R1 Renal +ve of partial obstruction, multiple bladder calculi and prostatomegaly and a major operation was done for the same. I do also suffer from peptic ulcers disease and I have documents of the same.

2. I am also aged your ladyship having been born on 01/10/1940 at Moyale County.

3. Your ladyship I am also a married man with several parental responsibilities. It is accidental that my wife is also here with me in jail serving a sentence of three years and this custodial sentence will erode my family cohesion and stability.

Yours faithfully

(signed)

Abdulkadir Anod”

7. The medical documents attached to the aforestated letter and which learned counsel relied upon are not medical reports in the strict sense. Mostly those documents are written in the medical jargon not easily understood by a lay person in medical field and other times they are graphs which are not easily understood by this court.

8. The appellant had an obligation to show to this court that their circumstances have changed entitling them to reconsideration of their bail application. My overall observation is that the appellants have provided insufficient evidence and therefore there is no reason to warrant this court to reconsider their bail application. The courts have often held that hardship exceptional or unusual circumstances or illness would not constitute a reason for the granting of bail. If indeed the first appellant has a medical condition there are medical facilities both in prison and when need be, out of prison.

9. In the end therefore I am of the respectful view that there is no basis or ground to reconsider the appellants' bail. Accordingly the application is dismissed.

DATED and DELIVERED at NANYUKI this 1st day of AUGUST 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant: Njue

1st appellant: Abdulkadir Anod Dole.....

2nd Appellant: Egal Bilad Abdallah

For Appellants

For the State:

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE