



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 34 OF 2016

BENSON KIPROTICH RUTO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application for bail pending appeal from the original conviction and sentence in

Criminal Case No. 318 of 2014 Republic v Benson Kiprotich Ruto in the Principal Magistrates'

Court at Eldama Ravine by M. Kasera, Principal Magistrate, dated 17th February 2016)

RULING

1. The appellant was convicted for possession of a suspected stolen motor vehicle contrary to section 323 of the Penal Code. He was sentenced to *eighteen months* imprisonment. The trial court ordered that the motor vehicle be forfeited to the State.
2. The particulars were that on 21st October 2013, at Mogotio Township, Mogotio District within Baringo County, he was found in possession of motor vehicle registration number KBK 196L. The vehicle was fitted with engine number INZ-A250391 chassis number NZE 121-0077740 Toyota station wagon but the engine and chassis number belonged to motor vehicle registration number KBF 502B reasonably suspected to be stolen or unlawfully obtained.
3. The appellant lodged an appeal on 29th February 2016. Pending the hearing and determination of the appeal, the appellant has presented a notice of motion dated 1st March 2016 praying for bail. It is supported by a deposition sworn by the appellant on even date.
4. The appellant contends that the appeal has overwhelming chances of success; that there is a likelihood that he will serve the full term of his sentence before the appeal is heard; that he was on bond in the lower court; and, that unless the prayers are granted, his appeal will be rendered nugatory.
5. At the hearing of the motion, learned counsel for the appellant submitted that the key ingredients of the offence were not proved. He submitted that the appellant was not found in possession of the property; and, that the registered owner of the vehicle was not called to the stand. Counsel was of the opinion that the appellant should have been detained; or, granted an opportunity to present a sale agreement or ownership documents. In a synopsis, the appellant contends that there are exceptional circumstances to warrant grant of bail.
6. The motion is contested by the Republic. Learned State Counsel submitted that all the elements of the charges were proved beyond reasonable doubt. It was further submitted that the appellant was granted opportunity by the police to provide ownership documents but he failed to do so. In any event, an official search turned out to be negative. I was implored to find that the appeal on conviction and sentence is hopeless.

7. The legal parameters in an application of this nature were well stated by the Court of Appeal in Jivraj Shah v Republic [1986] KLR 605-

“If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision is Somo v Republic [1972] EA 476 which was referred to by this court with approval in Criminal Application No. NAI 14 of 1986, Daniel Dominic Karanja v Republic where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed.”

8. It would be inappropriate at this stage to comment about the veracity of the evidence presented at the trial. I note however that when the appellant was confronted by the police, he claimed he *owned* the motor vehicle. He *drove* it towards the police station before it broke down. From the evidence of PW3, the vehicle was pushed to the AP’s camp for safe custody. PW1, PW2 and PW3 all testified that the appellant was given time to produce ownership documents. Four days passed. Inspection revealed the discrepancies that I set out earlier.
9. I am alive to the defence proffered by the appellant. He asserted *ownership*. He said the advocate who executed the agreement immigrated to America. He said that some unidentified persons gave him the vehicle in consideration of a loan of Kshs 120,000 towards payment of a hospital bill. His two witnesses, DW2 and DW3 confirmed they loaned him Kshs 120,000 and Kshs 130,000 respectively.
10. The learned trial magistrate did not believe the appellant for three reasons: first, the circumstances were *especially* within the knowledge of the appellant; secondly, the appellant did not name the persons who sold the vehicle to him; and, thirdly, the evidence pointed to a stolen vehicle. It will now be the duty of the first appellate court to re-evaluate that corpus of evidence and draw its independent conclusions. The less I comment about the matter, the better.
11. As to whether the points raised in the petition are *arguable*, I would say *yes*. Like I have stated, it will be the true province of the appellate court to re-evaluate all the evidence. But I am not persuaded that there are *exceptional grounds* or that a *substantial point of law or evidence* has been urged to sway the court to grant bail pending appeal.
12. The appellant was sentenced to *eighteen months* imprisonment. It will be for the appellate court to determine whether the sentence was lawful considering all the circumstances of this case; the fact that the appellant was a first offender; and, the mitigation proffered by the appellant. On the face of it, the sentence handed down is not *illegal*. It is true that a *substantial part* of the sentence *may* be served *before* the appeal is heard and determined. But from what I have stated, I am not persuaded that the appeal has an *overwhelming* chance of success. See Somo v Republic [1972] EA 476, Jivraj Shah v Republic [1986] KLR 605.
13. In the end, there are no *exceptional* circumstances to warrant grant of bail pending appeal; or, to suspend the sentence. It follows that the notice of motion dated 11th February 2015 is devoid of merit. It is hereby dismissed.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 21st day of April 2016.

GEORGE KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Appellant.

Ms. Brenda Oduor for the Republic.

Mr. J. Kemboi, Court Clerk.