

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 15 OF 2016

LAWRENCE RUTERE MURIUKI.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

1. The appellant through his notice of motion filed in court on 21st April 2016 brought an application for release on bail pending the hearing and determination of his appeal. The application is brought under certificate of urgency and was heard as such.
2. The appellant was convicted and sentenced to a fine of Kshs 100,000/- in addition to a sentence of imprisonment for five years by the court of the Resident Magistrate on 14th March 2016.
3. The application is supported by the grounds set out on the face of the notice of motion. Those grounds are as follows. First, the appellant has stated that he shall abide by all conditions which the court may impose in respect of his bail pending the hearing and determination of his appeal. Second, he has stated that he is physically disabled and the prison does not have facilities to provide for him as an inmate.
4. The appellant's application is anchored in his supporting affidavit. He has deponed that he was charged and convicted on the offence of trafficking in narcotic drugs contrary to section 4 (a) as read with section 2 (a) of Act No. 4 of 1994 and was sentenced to five years imprisonment. He has further stated that he has lodged an appeal, being High Court of Kenya at Embu, Criminal Appeal No. 15 of 2016 at Embu, which is yet to be heard. He has also deponed in the affidavit that his appeal has overwhelming chances of success. He has deponed that he will have served a large portion of his sentence before his appeal is heard and determined. Finally, he has deponed that he is a person of good character and will pose no harm to the society.
5. The law applicable in cases of bail pending appeal according to ***Somo v. R (1972) EA 476*** is that the applicant has to demonstrate that his appeal has overwhelming chances of success. In the alternative if he fails in that regard he may also be granted bail if he shows that there are exceptional or unusual circumstances in his appeal.
6. The appellant is a married person with dependant minors. The appellant made oral submissions in court and submitted that his appeal has high chances of success.
7. I have considered the affidavit evidence of the appellant and his grounds in support of his application and I find that he has not demonstrated that his appeal has overwhelming chances of success. I find from his grounds in support of the application and his affidavit evidence that he will not have served a large portion of his sentence before this appeal is heard and determined. The reason being that the record of appeal is ready and the appeal may be fixed for hearing as soon as it is practicable. The fact that the appellant is a person of good character and poses no harm to the society are not exceptional circumstances to warrant his release on bail pending the hearing and determination of his appeal.
8. In the light of the foregoing matters I hereby dismiss the appellant's application for bail pending the hearing and determination of his appeal.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **13th** day of **JUNE 2016**.

In the presence of both the applicant and Ms Mbae for the state

Court clerk R. Njue

J. M. BWONWONGA

JUDGE

13.06.16