



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 54 OF 2015

OCTAVIAN BUNDI MURIUKI..... APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(CONSOLIDATED WITH)

CRIMINAL APPEAL NO. 55 OF 2015

DAVID NJOGU MURIITHI..... APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

*Being an appeal from the judgment of the Principal Magistrate's Court (P. M. Kiama) Wanguru,
Criminal Case Number 93 of 2015 delivered on 9th December, 2015)*

RULING

1. **OCTAVIAN BUNDI MURIUKI** and **DAVID NJOGU MURIITHI** are the appellants and applicants herein who have been convicted of the offence of robbery with violence contrary to **Section 296 (2)** of the **Penal Code** vide Wanguru Principal Magistrate's Court Criminal Case No. 93 of 2015. They are currently serving the mandatory death sentence but have since appealed to this Court and contemporaneously made their respective applications under **Sections 356** and **357 (1)** of the **Criminal Procedure Code** to be admitted to bail pending appeal. The applications dated 25th May, 2016 were consolidated for purposes of hearing and determination.

2. The applicants through their learned counsel submitted that their appeals stand high chances of success and pointed out that their conviction was based on evidence of a single witness. They further pointed out that the charge sheet was defective as it failed to indicate in the particulars of the type of offensive weapon(s) used during the robbery.

3. It was further submitted that the appellants were on bail at the trial. The applicants contended that they have relatives who are willing to stand surety if given bond submitting that they are still young and energetic. They relied on the unreported case of **Simon Njogu and 2 others -Vs- Republic (Criminal Appeal No. 102 of 2011 at Embu)** where the court granted bond to appellants on account of overwhelming chances of success in the appeal.

4. The Respondent through Mr. E. P. O. Omayo learned counsel representing the State, opposed the application and relied on his affidavit sworn on 27th June, 2016. The Respondent was of a different view in so far as the chances of success in the appeal was concerned. Mr. Omayo felt that the prosecution case at the trial was overwhelming and in his view the appeal preferred herein stands no chance. He submitted that the complainant recognized some of the attackers and that the appellants were among those he recognized. The Respondent further countered the Appellants argument that they complied faithfully to bond terms at the trial by pointing out that the circumstances have now changed after the appellants were found guilty and convicted. Mr. Omayo also pointed out that the authority cited by the Applicants was not relevant to this case because the circumstances and the findings of that court were different from this present case.

5. I have considered the application and submissions made by both counsels. Appellants have the liberty to apply to be admitted to bail/bond pending appeal under **Section 357 (1)** of the **Criminal Procedure Code**. The Applicants herein have exercised that right before this Court and in considering whether or not to grant bail courts have established principles to be applied in such applications. In the cases of **Ragbir Singh Lamba -Vs- R (1958) E.A. and JIRVAJ SHAH -VS- R (1986) KLR 605** laid down the following principles:-

(i) Existence of exceptional or unusual circumstance that the court of appeal can fairly conclude that it is in the best interests of justice to grant bail.

(ii) Where it appears prima facie from the totality of the circumstances that the appeal is likely to succeed on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard.

(iii) Where the appeal filed has overwhelming chance of success or where the circumstances disclose substantial merit in the appeal.

6. Going by the above exposition of the law, and after going through the record and the proceedings from the lower court, this Court is unable to find existence of any of the above conditions. This Court asked the Appellants' counsel at the hearing of this application to point out exactly without necessarily going into the merits of the appeal, the exceptional point or issue that disclosed substantial merit in the appeal and he pointed out the particulars in the charge sheet, contending that the element of offensive weapons used in the incident was missing. However, a clear look at the Section (**Section 292 (2)** of the **Penal Code**) that creates the offence does not show that this point does disclose substantial merit in this appeal. I have also looked at the defence put forward by the Appellants during trial and when looked at in the context of the evidence adduced by the prosecution at the trial, I find nothing unusual or exceptional at this stage that renders merit to the application dated 25th May, 2016. In the premises the said application is disallowed. The appeal has already been admitted to hearing and the record is complete. I direct that directions be taken and the same be fixed for hearing on a date convenient to the Appellants' counsel.

Dated and delivered at Kerugoya this 20th day of July, 2016.

R. K. LIMO

JUDGE

20.7.2016

Before Hon. Justice R. Limo J.,

State Counsel Omayo

Court Assistant Willy Mwangi

Appellant 1 present

Appellant 2 present

Interpretation – English-Kikuyu

Gichimu for both appellants present

Omayo for Respondent present

COURT: Ruling signed, dated and delivered in the open court in the presence of Gichimu for both the appellants and Omayo for the Respondent.

R. K. LIMO

JUDGE

20.7.2016