

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 40 OF 2015

(From original conviction and sentence in criminal case No. 4 of 2014 of the Principal Magistrate's Court at Mwingi H. M. Nyaberi Ag.SPM).

SAKAYO MUKETI APPELLANT

V E R S U S

REPUBLIC RESPONDENT

RULING

Before me is an application for bail pending appeal filed on 14th August 2015, thumb printed by the applicant Sakayo Muketi the appellant but not dated. The application was filed in person and does not appear to be specific on the orders sought, but certainly it is a request for bail pending appeal, because the appellant says so. The appellant relied on the grounds of the application.

Learned Prosecuting Counsel Mr. Okemwa, submitted that the appellant had filed his appeal since 23rd June 2015 but had delayed in prosecuting the appeal. According to counsel, appellants who filed their appeals later had already prosecuted their appeals. Counsel was of the view that the appellant was not sincere and was merely trying to delay the hearing of his appeal. Counsel submitted that in any event, no exceptional circumstances had been disclosed in the application, warranting the grant of bail pending appeal.

This is an application for bail pending appeal. From the record and documents filed herein, written submissions to the appeal were filed by Mulinga Mbaluka and Co. Advocates on 3rd August 2015. The present application however, was not filed by the advocates.

The law is that a conviction in a criminal case is deemed to be proper unless the contrary is established. Bail pending appeal is therefore reserved for very exceptional circumstances such as where the appeal has overwhelming chances of success. The mere fact that an appellant was on bail pending trial, is not an exceptional circumstance. See the case of ***Somo -vs- Republic (1972) EA 476***.

The appellant has stated that he has been experiencing pains and that his wife passed away and left children such as the first born R M Z who was to sit KCPE Examination in 2015. He also stated that his father died in 1998 leaving behind his aged mother. He also said that his last born J M Z had tuberculosis.

In my view, all the above are not exceptional circumstances that relate to the appeal. The exceptional circumstances envisaged have to do with the appeal itself and the safety or wellbeing of the appellant. Outside family matters are not exceptional circumstances.

In any event the appeal of the appellant having been filed in 2015 and written submissions having been filed by counsel way back on 18th August 2015, the proper request by the appellant or his counsel should be for an early hearing date for the appeal, rather than a request for bail pending appeal. This appeal was ready for hearing way back in August last year, and this is October 2016 more than 1 year later. This application is therefore misconceived and not merited.

I find no merits in the application for bail pending appeal. The application is thus dismissed.

Dated and delivered at Garissa this 13th day of October 2016.

GEORGE DULU

JUDGE