



REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

HIGH COURT CRIMINAL APPEAL NO 155 OF 2014

DANIEL MUKUKHA NJAU APPELLANT

=VERSUS=

REPUBLIC RESPONDENT

RULING

1. Through the Notice of Motion dated 18th December, 2014 and filed under a certificate of urgency on even date, the Appellant ***Daniel Mukuha Njau*** applied that he be admitted to bail/bond pending the hearing and determination of his appeal.
2. The application is premised on two grounds namely:-
 - i. ***That the appeal has overwhelming chances of success.***
 - ii. ***That exceptional circumstances exist to warrant the release of the appellant.***

The application was supported by a detailed affidavit sworn by the appellant on 18th November, 2014. The depositions in the affidavit merely seek to demonstrate that the appeal filed by the Applicant against his conviction and sentence in Eldoret Chief Magistrate's Criminal case No. 402 of 2012 had high chances of success. The depositions mainly challenge the evidence adduced before the trial court and the findings by the learned trial magistrate.

3. The application was argued before me on 16th December, 2014. Learned counsel ***Mr. Maathai*** appeared for the Applicant while the State was represented by learned prosecuting Counsel ***Ms. Oduor***.

In his submissions, ***Mr. Maathai*** urged the court to allow the application on grounds that the Applicant's appeal had high chances of success considering the nature of the evidence adduced before the trial court.

He further submitted that the Applicant had been on bail during his trial and he did not abscond and that if the application was allowed, the state did not stand to suffer any prejudice.

4. ***Ms. Oduor*** for the state did not oppose the application.

The state conceded to the application on grounds that the Applicant's appeal had high chances of success.

5. I have considered the application and the submissions by counsel for the applicant and the state.

Under S357 of the Criminal Procedure Code, this court is empowered to admit an appellant to bond

pending the determination of his appeal on terms the court deems just.

The discretion of the court under this provision of the law must however be exercised judicially in accordance with established legal principles which the courts have developed over time through case law while taking into account the circumstances of each case.

6. The most important of those principles is that the Applicant must

demonstrate that his appeal has overwhelming or high chances of success. Another consideration the court may bear in mind is whether special or exceptional circumstances exist which would require the court to exercise its discretion in the applicant's favour and whether there is a likelihood that the

sentence would be served before the appeal is heard.

See: *Mutua vs Republic 1988 KLR 497; Raghbir Singh Lamba vs Republic (1958) EA 337 and Kaguma vs Republic (2004) 1 EA 68.*

7. I have noted the evidence adduced before the lower court as shown in the proceedings annexed to the application as well as the judgment delivered by the trial court on 10th October, 2014. I have also considered the grounds cited in the Applicant's petition of Appeal.

Though both counsels submitted at length on the kind of evidence adduced before the trial court, I do not wish to comment on that evidence at this stage lest I prejudice the hearing of the appeal. Suffice it to say that I am satisfied that the Applicant has an arguable appeal with good chances of success. The proceedings in the lower court also validates the claim that the Applicant had been admitted to bond in the trial court and he did not abscond.

8. In view of the foregoing, I find merit in the application and it is hereby allowed.

I accordingly order that the Applicant be released upon signing a personal bond of Kshs.500,000/- together with one surety of a similar amount.

The surety will be approved by the Deputy Registrar of this court. The Applicant will attend mentions before the Deputy Registrar once every three months during the pendency of the appeal unless other orders are issued by this court.

Orders accordingly

C. W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT ELDORET THIS 22ND DAY OF JANUARY 2015

In the presence of:-

The Appellant

Mr. Kigamwa for the Appellant

N/A for the state

Paul Court Clerk