



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MISC. CRIMINAL APPLICATION NO.34 OF 2015

ABDULLAHI FARAH IBRAHIM.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By Notice of Motion dated 22nd January, 2015 brought under Section 356 of the Criminal Procedure Code and all other enabling provisions of the law the applicant herein prays to be granted bail pending the hearing of High Court Criminal Appeal No.12 of 2015.

The application is premised on the ground that the applicant is very sick as he is ailing from Schizophrenia and requires urgent medical attention.

The application is supported by the affidavit of Roselyn Mutemi Mwendu the guardian and biological mother of the applicant. She deposes that the appellant has been seriously ailing from schizophrenia and if he is not properly treated the disease may turn out to be fatal. That although the prison provides medical attention, given the serious condition of the disease the appellant requires more personalized treatment. She requests that the appellant be seen by a private doctor one John Gatere of Chiromo Lane Medical Clinic. She also undertakes to be the guardian of the appellant as he continues to undergo the medical treatment.

The application was canvassed before me on 4th of May, 2015. Learned counsel Mr. Turunga appeared for the applicant and in brief submissions stated that the applicant's health status has deteriorated to the extent that the applicant does not recognize his own mother and he believes he is somebody else. He pleaded with the court to urgently release him so that he can seek personalized medical attention particularly given the circumstances under which he was arrested. He submitted that at the time of his arrest he was still ailing from schizophrenia and he had escaped from Kiambu District hospital where he had been admitted to undergo treatment for the same condition. And as he wandered he was arrested and charged with preparation to commit a felony. It was thus a case of being at the wrong place at the wrong time.

In response, Learned State Counsel Mr. Aluda did not oppose the application. She submitted that given the seriousness of the applicant's illness urged the court to objectively look at the application.

I have accordingly considered the respective submissions and I take the following view of the application. The guiding principles to be considered in an application for bail pending appeal were enunciated in the case of **JIVRAJ SHAH –VS REPUBLIC (1986) KLR, 605** in which the Court of Appeal held as follows:-

“1. The principle consideration in an application for bail pending appeal is, the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests of justice to grant bail.”

“3. The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”

The two holdings may be crystallized into two major factors:-

- a. The applicant must demonstrate existence of unusual and exceptional circumstances.
- b. He must also demonstrate that the appeal has a likelihood of success given the nature of the evidence adduced or other substantial circumstances that may warrant the success of the appeal.

In the instant case the main ground on which this application is sought is that the applicant is too sick such that if personalized medical attention is not accorded to him the effect of the sickness may be divesting. I have had a look at a letter dated 4th January, 2015 by Dr. John N. Gatere a Consultant Psychiatrist marked as annexure RM-6 which confirms that the applicant suffers from schizophrenia which is a chronic mental illness in which the patient loses contact with reality. It states that people suffering from the condition have hallucinations (abnormal perceptions) and delusions (very strong held beliefs, which cannot be changed by reason). The same fact is attested by a medical letter from Kenyatta National Hospital dated 17th January, 2015 and marked RM-9. There is also a photograph of the applicant on admission bed at Kenyatta National Hospital marked RM -8 thereby confirming that indeed the applicant has been an in-patient at the hospital suffering from schizophrenia. This then explains that the appellant may most likely have been arrested when he escaped from his admission bed at Kiambu District hospital. It also attests to the state in which the applicant is currently presenting himself.

Given the serious condition in which the applicant is at present, it is my view that this case presents a very unusual and exceptional circumstance where personalized medical care is needed. Whereas courts have held that personal problems (which may include the ill health of a convict) cannot be considered as unusual and exceptional circumstance that would warrant the granting of bail pending appeal (**MUTUA – VS- REPUBLIC 1985 KLR, 497, DOMINIC KARANJA –VS- REPUBLIC 1986 (KLR), 612**), the present case presents a very unique scenario in that the prison cannot offer the delicate nature of treatment required for the illness the appellant is suffering from. Furthermore, the applicant’s mother who appears to be struggling with her son’s illness has undertaken to remain his guardian for the period of his treatment and to avail him in court when needed. In the instance, this court thinks that the application is merited and the orders sought ought to be granted.

In the upshot, the application herein is granted. The applicant shall execute a personal bond of Kshs.50,000/- with one surety of a similar amount. The surety must be his mother one Roselyn Mwendemutemi of Telephone No.0721-209475 and identity card No.88231144. The said surety shall be assessed by the Deputy Registrar of this court. Further, Roselyn Mwendemutemi is mandated to ensure that the applicant is presented in court when and if required by the court and must at all times avail herself during the mention or hearing of the appeal failure to which the court shall have no alternative but recall the bond.

It is so ordered.

DATED and DELIVERED at NAIROBI this 7th day of MAY 2015.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:-

M/S Aluda for the respondent.

Mr. Turunga for the applicant.