

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL CASE NO. 148 OF 2014

[Being an appeal from the judgment of the Bungoma CM's court [C.L. Yalwala] delivered on 11th December 2014 in CM'S criminal case no. 1894 OF 2010]

GILBERT KHAEMBA ACCUSED

VERSUS

REPUBLIC..... RESPONDENT

RULING

1. The appellant was charged in CMCC No. 1894 of 2010 with 4 counts namely; impersonating contrary to section 382 of the Penal Code, obtaining money by false presences contrary to section 313 of the Penal Code, making a document without authority contrary to section 257 of the Penal Code, personation contrary to section 382 of the Penal code. He was convicted of count 1, 2 and 3. He was sentenced for 1 year in court 1, 2 years in court 2 and 1 years in court 3. The sentences are to run concurrently.

2. Being aggrieved by the sentence he has appealed against the sentence and conviction.

3. The application before court is bond pending appeal on grounds that appeal has high chances of success, he is likely to loose his job as a teacher, and he may serve the term before the appeal is heard. The state filed grounds of appeal stating that the appeal does not stand any chance of succeeding.

4. I have considered the trial arguments herein. I have also considered the pleadings placed before the court. I am not able to appreciate due to lack of proceedings on record that the appellant indeed has an overwhelming chance of success. A convicted accused has to be marked differently as compared to one awaiting trial. A convicted person has a jail term hanging over his head.

Secondly I do not agree that the appeal may not be argued soon. The judgment was delivered on 11th December 2014, petition of appeal filed on 22.12.2014. There is no application to admit the appeal on the part of the appellant. Delay if any would be on the part of the appellant and cannot be a basis for seeking for bond.

In the circumstances I decline to grant the application.

However in the interest of justice I direct that the appellant's counsel prepares the record forthwith for mention in a week's time for admission and fixing of a hearing date.

Dated at Bungoma this 26th day of May 2015.

ALI-ARONI

JUDGE.