

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 61 OF 2015

EMIEL NJERU NYAGAAPPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

The applicant has applied for bail pending appeal arising out of his being convicted and sentenced to a concurrent imprisonment term of twenty five years in respect of the offences of obtaining money by false pretences (count 1), conspiracy to defraud (count 2), forgery (count 3), and making a document without authority. (Count 4).

The application is brought under **Article 49 (1) (I) of the 2010 Kenya Constitution and section 357 (1) of the Criminal Procedure Code**. In support of his application he has stated that he has a physically disabled mother. He has further stated that if released on bail he shall abide by all its terms and conditions.

The applicant in his supporting affidavit has stated that his appeal has high chances of success. He has also stated that his aged, disabled and widowed mother solely depends on him. Additionally he has stated that unless he is released on bail, her mother will suffer. This is the main affidavit evidence that he relies in his application.

An applicant for release on bail pending release on bail pending appeal must satisfy one of the two following conditions. First, he has to demonstrate that his appeal has high chances of success according to the High Court in **Somo v. R (1972) EA 476**.

If he fails to demonstrate that his appeal has a high probability of success, the applicant may be released if he shows that there are exceptional or unusual circumstances in his appeal.

I have considered the applicant's affidavit evidence and the applicable law as set out in *Somo v. R, supra*. It is clear from that evidence that he has failed to demonstrate that his appeal has a high probability of success.

One of the major grounds in support of his application is that his aged, disabled and widowed mother stands to suffer unless he is released. According to him, his mother solely depends on him. This in itself does not constitute an exceptional or unusual circumstance to warrant his release on bail pending appeal. He has therefore failed to show that there are exceptional or unusual circumstances in his appeal.

In the light of the applicants affidavit evidence and the applicable law, I find that the applicant has failed to demonstrate his appeal has a high probability of success. He has also failed to show that there are exceptional circumstances in his appeal.

In the circumstances his application is hereby dismissed in its entirety.

Ruling read and delivered in open court in the presence of the Applicant and counsel for the Respondent.

DATED THIS 25TH DAY OF NOVEMBER 2015.

J.M. BWONWONGA

JUDGE. - 25.11.2015