



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 71 OF 2015

LAWRENCE KARIUKI NJERUAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant filed his Notice of Motion in court, date stamped 25.9.2014 under certificate of urgency seeking orders for release on bail pending appeal.
2. The application for bail pending the hearing and determination of his appeal follows his being sentenced to thirty five (35) years imprisonment by the Senior Resident Magistrate at Embu on 24.8.2015 in respect of the offence of attempted defilement.
3. In his affidavit dated 25.8.2015 the applicant has stated that his health has deteriorated following his being sentenced. He has further stated that he has developed a respiratory disease due to congestion in prison. The applicant has also stated that if released, he will always attend court when required to do so. And finally, the applicant has deponed that he is a first offender and that his family solely depends upon him.
4. In addition to his affidavit evidence, the applicant made oral submissions. In those submissions he submitted that his wife is pregnant, and depends upon him for her upkeep. He has further submitted that he also buys drugs for his father who suffers from diabetes. He finally submitted that while in prison he was attacked by some illness, which the prison medical staff managed to cure him.
5. The application is opposed by the respondent state. MS Mbae, counsel for the state submitted that the applicant has not produced any documentary proof that he suffers from a respiratory disease. Additionally she submitted that the prison authorities have health facilities to treat the applicant.
6. She also submitted that in law the fact that an applicant is suffering from some ailment is not a ground upon which release may be ordered. She cited *Michubu v. R*, a decision of the High Court (at Meru) *Criminal Appeal No. 100 OF 2012*, in which the applicant therein was refused bail on the ground that he was suffering from high blood pressure and T.B.
7. Finally she submitted that the applicant had not demonstrated that his appeal has a high probability of success. She relied on the evidence of the wife of the applicant, who testified as the second prosecution witness (P.W.2). Her other submissions are not material to the outcome of this application.
8. According to *Somo v R (1972) E.A. 476*, an applicant for bail pending appeal has to demonstrate that his appeal has overwhelming chances of success. If such an applicant fails to do so, he may in the

alternative show that there are usual or exceptional circumstances in his appeal.

9. In the light of the foregoing it is clear that the ill health of the appellant, that he supports both his pregnant wife and his diabetic father are matters that do not constitute unusual or exceptional circumstances that warrant release on bail pending appeal.

10. In the light of the foregoing I find from the affidavit evidence of the applicant and his oral submissions that he has failed to satisfy either of the two criteria set out in ***Somo v R***, *supra*.

11. The upshot is that his application for bail pending the determination of his appeal fails and is hereby dismissed.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this.. 7th day of **DECEMBER .2015**

In the presence of the applicant

Ms Manyal for State

Court clerk Mr Nyaga

J.M BWONWONGA

JUDGE

7.12.15