



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 151 OF 2013

PATRICK SUKWA NGILA .....APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

R U L I N G

1. The application dated 27<sup>th</sup> August 2013 brought by way of Notice of Motion pursuant to the Provisions of **Section 357** of the **Criminal Procedure Code** is for bail pending appeal. It is premised on grounds that the appeal has overwhelming chances of success; the conviction and subsequent sentence imposed by the trial court is illegal; and the applicant is ready to abide with bail terms to be imposed.
2. The application was canvassed by way of written submissions. In his submissions, counsel for the applicant stated that the appeal has an overwhelming chance of succeeding because there was a miscarriage of justice and the evidence adduced did not support the charge.
3. In a response thereto the state opposed the application. It was argued that the applicant had not demonstrated that the case had a high chance of succeeding; the sentence meted out was within the law and not excessive.
4. Rival submissions of both counsels have been considered. Conditions to be satisfied by the applicant to be released on bail have been considered in the case of **Somo versus Republic 1972 E.A. 476** where it was held thus:

***“The most important ground is that the appeal has an overwhelming chance of being successful; in that case there is no justification for depriving the applicant of his freedom.”***

5. It has also been held that anticipated delay in hearing of the appeal together with other factors constitute good grounds for granting bail pending appeal (**See Chimambai versus Republic E.A. 343**).
6. The applicant herein was tried and convicted of the offence of assault causing actual bodily harm. The charge of assault was substituted by one of grievous harm contrary to **Section 234** of the **Penal Code** on the 8<sup>th</sup> May 2013. This court will have a duty of making the necessary amendment/verification/alteration as provided by the law. Looking at the evidence adduced, it cannot be stated that the appeal has a high chance of succeeding. No circumstances that are unusual have been brought to the attention of this court that would call for release of the applicant on bail pending appeal.
7. Finally, it has not been demonstrated that there will be a delay in hearing of the appeal. In the premises the application lacks merit. It is dismissed.

**DATED, SIGNED and DELIVERED at MACHAKOS this 21<sup>ST</sup> day of MARCH, 2014.**

**L.N. MUTENDE**

**JUDGE**