



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CRIMINAL APPEAL NO. 8 OF 2014

BONIFACE KAMAU WANJIRU.....APPLICANT/APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The appellant moved this court by a notice of motion dated 29th May, 2014 seeking to be admitted to bail pending the determination of his appeal. The motion was made under **section 357** of the **Criminal Procedure Code** and **article 49(1) (h)** of the **Constitution**. The application was supported by the applicant's counsel's affidavit sworn on 29th May, 2014.

This application was provoked by the appellant's conviction by the subordinate court of the offence of robbery with violence contrary to **section 296(2)** of the **Penal Code**. He was accordingly sentenced to death.

When the application came up for hearing counsel for the appellant submitted that the appellant's appeal has high chances of success mainly because the appellant was not properly identified as one of the assailants who had attacked and robbed the complainant.

According to counsel, the prosecution evidence on the conditions for favourable identification of the alleged robbers conditions was contradictory; while one witness said that there was electricity light on the night in question the other witness said that there was no such light and that it was only a lamp and a candle that were in use at the material time and place. The counsel argued that having failed to inquire into the conditions under which the appellant was identified, the learned magistrate could not convict the appellant on the evidence of a single identification witness.

Counsel relied on the decision of the court of appeal in **Maitanyi versus Republic (1986) KLR 198** where the court held that although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.

Ms Keya for the state conceded to the application and agreed with counsel for the appellant that the evidence on the identification of the appellant was wanting; she reiterated that the evidence of the single

identification witness was not sufficient.

All that the applicant needs to demonstrate in an application such as this is that the appeal has high chances of success and therefore if the appellant is not released on bail, the appeal would be rendered futile to the extent that he will have either served the entire term of the sentence or a substantial part of it.

In the application before court, the applicant has demonstrated that the appeal raises some substantial point of law whose determination is likely to favour the applicant. In such circumstances, the appellant should be released on bail since it will not serve the interests of justice to retain him in jail before his appeal is determined.

In the Court of Appeal decision in **Dominic Karanja versus Republic (1986) KLR at page 612**, it was held that where an appeal has overwhelming chances of success, there was no justification for depriving the applicant of his liberty.

Again in the Court of Appeal decision of **Jivraj Shah versus Republic (1986) KLR 605**, the court was also of the view that if it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, then bail should be granted.

Without going into the merits of the appeal, it is sufficient to say at this point that that the appellant's motion dated 29th May, 2014 is merited; it is hereby allowed and the appellant is granted a bond of Kshs. 500,000/= with a surety of the like sum. The appellant shall also report to the deputy registrar at the High Court in Murang'a, once every month until the appeal has been heard and determined.

Dated, signed and delivered in open court this 20th day of June, 2014

Ngaah Jairus

JUDGE