



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO.64 OF 2014

AUGUSTINE SIMIYU MANASI.....APPELLANT

VRS

REPUBLIC.....RESPONDENT

(Appeal from Hon. Mr. S. N. Abuya, Principal Magistrate

in

Webuye Cr. Case No.426 of 2012)

RULING

1. On 22nd May, 2015, Augustine Simiyu Manasi, (*“the Applicant”*) was charged before the Chief Magistrate's Court Webuye with an offence of robbery with violence contrary to Section 296 (2) of the Penal Code. It was alleged that on 20th May, 2012 at Kambini Area, Misikhu Location in Bungoma County jointly with another not before court robbed Moses Wanyonyi Wanyama cash of Kshs.3,000/= and at immediately before or after the said robbery used actual violence to the said Moses Wanyonyi Wanyama.
2. After trial, he was convicted of that offence and was sentenced to death. He has preferred an appeal to this court. By a Motion on Notice dated 17th July,2014, he has sought to be admitted to bail pending appeal. The grounds for the application are both in the body of the motion and his Supporting Affidavit sworn on 17/07/14. The grounds were that the application had been brought timeously; that he was on bail during his trial and he religiously attended court; that the Appeal which has been filed has high chances of succeeding and that the same will take years before it is finally heard and determined, a period when he will be spending in prison.
3. Mr. Onchiri, Learned Counsel for the Applicant submitted that the Petition of Appeal revealed that the Appeal has high chances of success; that the offence of robbery with violence under Section 296 (2) was never proved since no harm with dangerous weapon was proved; that the complainant went for medical examination after the Applicant had already taken a plea on 22/5/12. He further submitted that the provisions of Section 200 of the Criminal Procedure Code were not complied with; that Section 211 was not complied with as the order putting the Applicant on his defence was made without the benefit of any submissions on no case to answer.
4. Counsel further submitted that the sum of Kshs.7,000/= was not produced in evidence to show that the Applicant had any money with himself and that the soiled clothes were never produced. Counsel relied on the Cases of **Edwin Ndegwa Justus -vs- Republic [2010] eKLR and Filbert Korir -vs-**

Republic [2014] eKLR among others. Counsel urged that the application be allowed.

5. The State opposed the application relying on the grounds of opposition filed in court on 25/7/14. Mr. Jesse Kamau, Learned State Counsel submitted that the appeal does not have any overwhelming chances of success. That there was no exceptional circumstances; that the sickness (diabetes) suffered by the Applicant could be tested and handled by the prison authorities. In his view, the evidence at the trial was overwhelming against the Applicant. He urged that the application be dismissed.

6. I have considered the Affidavit on record, the proceedings of the trial court and the judgment. I have also carefully considered the submissions of counsel. It is well settled that in an application for bail pending appeal, an Applicant, must show that the appeal has overwhelming chances of success and that he must show the existence of exceptional or unusual circumstances upon which the court can consider that in the interests of justice the Applicant be granted bail. This is premised on the presumption that upon conviction, an Applicant is serving a lawful jail term and that his conviction was legal.

7. I have looked at the Petition of Appeal. The Applicant intends to argue a total of eleven (11) grounds of appeal. Some of them were touched on by his Advocate at the hearing of this application. It was argued that the ingredients of the offence under Section 296 (2) was not established. From the record, a P3 form showed that the Complainant was injured. There was also evidence that the Appellant was in the company of another without making any firm finding. I do not think that, that ground may be arguable. As regards the complaint that Section 200 was not complied with, I have seen page 15 of the proceedings. The record reads:-

“Court: Provision of Section 200 CPC **complied
and explained to the accused who chooses:-**

Accused: I want matter to proceed from where **it
had reached.**

**Court: Matter to proceed from where it had
reached.....”**

At least, it may be argued that *prima facie* there may have been compliance with that provision of the law. The complaint about the P3 form having been filed after plea, to my mind, that may not be a serious ground of appeal. Further, I have considered the record, the proceedings seem to have been conducted substantially in accordance with the law.

8. I have carefully examined the grounds of appeal that the Applicant has put forth but I am convinced and satisfied that they do not strike me as having an overwhelming chances of success. I do not intend to examine them here in extenso as I am not hearing the appeal. I am also not convinced that the Applicant has put forth any unusual circumstances to warrant him being admitted to bail pending appeal.

8. In the circumstances, I am not satisfied that the application has any merit. The same is hereby dismissed.

DATED and DELIVERED at Bungoma this 22nd day of September, 2014.

A. MABEYA

JUDGE