

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 18 OF 2012

JOHN NJOROGE NDUNG'U.....
.....**APPELLANT**

-VERSUS-

REPUBLIC.....
.....**RESPONDENT**

RULING

The Appellant has moved this Court for orders for bail pending appeal or alternatively for suspension of execution of the sentence imposed upon conviction pending the hearing and the determination of the appeal. The Motion is stated to have been made under **Section 3(1) and (2) the High Court Procedure Rules** and **Section 357 of the Criminal Procedure Code, Chapter 75 Laws of Kenya**.

The Appellant was charged with two counts of Stealing by Agent contrary to **Section 283 of the Penal Code**. He was convicted on both counts and sentenced to serve two years imprisonment on each of the counts. The learned magistrate ordered that the sentences should run consecutively.

When the application came up for hearing Counsel for the Appellant submitted that the appeal has overwhelming chances of success. He referred to several grounds in the Petition of Appeal one of which is that the learned magistrate erred in sentencing the Appellant in the way she did. The state did not oppose the Motion; indeed it was submitted on behalf of the state that the sentences imposed were against sentencing policy to the extent that the learned magistrate ordered that the sentences to run consecutively when she ought to have directed that they run concurrently.

I have considered the application and counsel's submissions. In the case of **Odero Versus Republic (1984) KLR 621**, the High Court (Brar, Mbaya JJ) sitting in Nairobi held that if a series of acts are so connected together by proximity of time, community of criminal intent, continuity of action and purpose or by the relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction. Accordingly, the court concluded that, in cases where a person has been charged with and convicted of two or more counts involving the same transaction, the practice is to direct that the sentences should run concurrently. The Appellants appeal against sentence was allowed to the extent that the learned magistrate directed the sentences to run consecutively.

I would take cue from the decision in Odero's case and find at this stage of the proceedings that the prospects of the appellant's appeal, at least against sentence, are bright. The chances of appeal against sentence are high.

Counsel for the Appellant also submitted that the Appellant is sickly and has suicidal tendencies. Medical records to prove this assertion were exhibited to the affidavit in support of the Motion. It is also apparent from the judgment that at one point when the Appellant found himself in problems similar to those that led to his prosecution, he attempted suicide and was hospitalised at Moi Teaching and Referral Hospital in Eldoret. These contentions were not disputed or controverted and I am left to conclude the Appellant

has demonstrated exceptional circumstances upon which bail pending appeal would be granted.

In the premises I allow the Appellant's Notice of Motion dated 20th December, 2012 and order that the Appellant be admitted to bail pending appeal on the same terms as those that were imposed in the magistrates' court, that is to say, the Appellant will be released subject to a bond of **Kenya Shillings Five Million (Kshs. 5,000,000.00)** with one surety of a similar amount. The Appellant will however be required to report to the Deputy Registrar ever first Monday of every month pending the hearing and determination of his appeal. It is so ordered.

Dated and delivered in open court at Murang'a this 28th January, 2013

NGAAH JAIRUS

JUDGE