



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Appeal 182 of 2010

DAVID NDONGA KIMOTHO.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

RULING

1. The application before the court is dated 16th January 2013 in which the applicant seeks that he be released on bond/bail pending the hearing and determination of the appeal.
2. It is supported by the affidavit of Mr. Charles Wahome Gikonyo the applicants advocate wheres he deponed that the appeal has overwhelming chances of success in that there was doubt in the prosecution case which doubt out to have been resolved in favour of the appellant.
3. That the learned trial magistrate erred in shifting the burden of prove from the prosecution to the appellant to prove his innocence.
4. The application is not opposed by Miss Kitoto for the State.
5. It must be pointed out that as was held in SOMO V R. [1972] E.A 476 the application for bail pending appeal must show that his appeal has overwhelming chances of success and that there were exceptional or unusual circumstances that exist.
6. I have looked at the proceedings before the trial court and without commenting on the chances of success of the appeal herein I agree with the submission by the appellant that the same has made out a case for the grant of bail pending appeal.
7. I therefore allow the application herein and order that the appellant be released on bail/bond pending appeal on the following terms:
 - a. Bond of Ksh. 500,000/= with one surety of similar amount or in the alternative
 - b. Cash bail of Ksh. 300,000/=.
 - c. The appellant to attend mention before the Deputy Registrar of this court once after every 30 days with the first such mention being on 21st March 2013 until final determination of the appeal.

Dated and delivered at Nyeri this 21st day of February 2013.

J. WAKIAGA

JUDGE

Miss Bigern for W. Gikonyo

Mr. Cheboi for the state.

Court: The ruling is read in open court in the presence of the above named.

J. WAKIAGA

JUDGE