



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 163 of 2013

(From original conviction and sentence in Criminal Case No.770 of 2012 of the Chief Magistrate’s Court at Naivasha – S. GITHINJI, CM)

MILTI OLE NKIPAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By the application dated 29/8/2012, Milti Ole Nkipai, seeks an order that he be admitted to bail pending the hearing of his appeal. The application is supported by grounds found in the body of the application and the supporting affidavit of the same day. The applicant avers that he has filed an appeal against both conviction and sentence; he was sentenced to 7 years imprisonment for an offence of stock theft contrary to **Section 279** of the **Penal Code**. It is his view that the appeal has high chances of success, and yet it may take some time before it is heard and determined. He is ready and willing to abide by any terms and conditions that the court will give.

The court in considering an application for bail pending appeal, must bear in mind what was stated in the case of **Mundia v Rep [1986] KLR 623:-**

- “1. **The Criminal Procedure Code (cap 75) section 356 permits admission to bail pending appeal.**
- 2. **Admission to bail pending appeal is a discretionary power which the court must exercise it judicially in accordance with laid down principles.**
- 3. **Once a person has been convicted and sentenced, his application for bail pending appeal will be granted only in exceptional circumstances.**
- 4. **There is a presumption that once a person is convicted he was properly convicted.**
- 5. **The chances of the appeal succeeding is a factor for consideration in arriving at a decision in an application for bail pending appeal.**
- 6. **Bail pending appeal may be granted where there is a risk that the sentence will have been served by the time the appeal will be heard but there must exist the major issue of overwhelming chances of the appeal in the first instance.”**

I have considered the application and upon perusal of the record of appeal, it is ready for hearing. The applicant was sentenced to 7 years on 9/8/2012 about 5 months ago. The appeal was admitted to hearing on 30/12/2012 In my view, the applicant should have his appeal heard and determined at once instead of

taking this winding course of having this application heard. The appellant has only served 6 months and there is no risk of the appellant serving most of the sentence before the appeal is heard.

Whether the appeal has high chances of succeeding:

As held in **Mundia's** case, once one is convicted, there is a presumption that he was properly convicted. In the present case, Lesole Ole Leshinka's cattle were stolen from Ewaso Kedong on 5/3/2012. The complainant reported the matter to the Chief, Kedong Location and on 8/3/2012, he went to Mai Mahiu slaughter house where he was shown carcasses which he identified as belonging to his cattle which had been stolen. He had made marks on the head (face). PW2, Koilel, a brother to PW1 accompanied PW1 to the slaughter house and identified the carcasses from the marks (branding). PW4, Virginia Njeri, a livestock trader called police after she found that the appellant had delivered 7 head of cattle to her watchman on 7/3/2012 at 10.40 p.m. as per the records kept. She became suspicious because the cattle had come from Suswa and she knew the appellant. The evidence of the three witnesses that it is the appellant who delivered the stolen cattle to PW4's watchman and his identity was recorded and he was found at PW4's business premises, is sufficient to show that the prosecution had a probable case.

In the end, I am not satisfied that there are no exceptional circumstances in this case that would warrant the exercise of this court's discretion to grant bail pending appeal to the applicant. The application is therefore declined.

DATED and DELIVERED this 28th day of March, 2013.

R.P.V. WENDOH
JUDGE

PRESENT:

Ms. Kahunga for the appellant/applicant

Mr. Chrichir for the State

Kennedy – Court Clerk