



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 64 OF 2013

MESHACK NJOGU KARIUKIAPPELLANT

VERSUS

REPUBLICRESPONDEN

RULING

This is an application for bond pending appeal brought under section 357 of the Criminal Procedure Code.

The grounds are that the applicant has filed an appeal at the High Court which is No. 64 of 2013. Secondly, that the appeal has high chances of success and thirdly that it may take a while before the appeal is heard and determined.

It is supported by the affidavit of his mother one **SUSAN MICHAEL KARIUKI** who depones that the Appellant was never accorded an opportunity to be defended by Counsel of his own choice.

That the proceedings were characterized by emotions, leading to cancellation of cash bail and requests for disqualification.

The application is opposed on the grounds that the appellant had severally jumped bail leading to the cancellation of his bond.

I have perused the proceedings of the lower Court and its noted that the Accused had been charged with causing grievous harm contrary to section 234 of the Penal Code was Convicted and Sentenced to five years imprisonment.

It is further note that on the 8th day of March, 2012 the Accused was not present in Court. The following day he presented himself in Court where it was explained that the accused had been advised that the matter was listed for 9th March, 2012 but not 8th March, 2012. The bond was reinstated upon that explanation.

On 23rd November, 2012 the Accused was absent when warrants of arrest were issued. The same day at 3:00pm he presented himself in Court and explained that he had fallen ill in the morning due to food poisoning. That explanation was not accepted by the trial magistrate who ordered the cancellation of the bond which was later reinstated on 7th December, 2012 but canceled on 18th April, 2013 to await

Judgment on 19th April, 2013 when he was Convicted and Sentenced to five years Imprisonment.

I do find that the Accused had given plausible explanations for his absence in Court. The first time the Court agreed with him that he was misled as to the date of hearing and the second time he was late by several hours.

I find his application has merit. He is admitted to a bond of Ksh. 100,000/= with one surety of similar amount.

Ruling dated and delivered this **5th** day of **August, 2013**.

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M. MUYA

JUDGE

5TH AUGUST, 2013

In the presence of:

Learned Counsel for the defence Mr. Gichana

State Counsel absent

Court clerk Mr. Musundi