



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL APPEAL NO. 33 OF 2013

SOLOMON KIPLANGAT BETT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The subject matter of this ruling is the Notice of Motion dated 14/08/2013 in which **SOLOMON KIPLANGAT BETT**, the Appellant/Applicant herein, seeks to be released on bail pending Appeal. The Motion is supported by the Appellant's affidavit. When the Motion came up for inter-parties hearing, Mr. Rogoncho, learned prosecution counsel informed this court that the office of the Director of Public Prosecution did not oppose the same.

Before delving deeper into the merits or otherwise of the motion, I think it is important to set out in brief the history behind the appellant's application. The record shows that the appellant was arraigned before the Chief Magistrate's Court, Kericho where upon he pleaded guilty to the charge of grievous harm contrary to **Section 234** of the **Penal Code**. He also confirmed that the facts outlined by the prosecution in support of the charge to be true. The particulars of the offence are that on the 22nd day of April 2013 at about 8.00am at Kipsigo Village in Kericho District within Kericho County, he unlawfully did grievous harm to Hellen Chepkirui Rotich. The facts outlined by the prosecution show that on the aforesaid date, the complainant was attacked by the appellant while she was on her way together with her children to till her farm.

It is said the appellant got annoyed when he was told by the complainant that she had not taken to him his jembe. He viciously attacked the complainant using a panga he had.

Fortunately, members of the public rescued the complainant and took her to hospital for treatment. The complainant's left thumb had to be amputated. The doctor assessed the injury visited upon the complainant to be grievous. Upon taking into account the charge and the facts outlined, the learned Ag. Chief Magistrate recorded a plea of guilty and proceeded to sentence the Appellant to serve 10 years imprisonment. Being dissatisfied, the appellant preferred this appeal. He put forward the following grounds of appeal. He put forward the following grounds of appeal in his petition.

1. **THAT the learned trial magistrate erred in law and fact in convicting the Appellant against the weight of evidence.**
2. **THAT the learned trial magistrate erred in law and fact in convicting the Appellant on a defective charge.**
3. **THAT the learned trial magistrate erred in law and fact in considering extraneous issues in**

convicting the Appellant.

- 4. THAT the learned trial magistrate erred in law and fact in awarding a sentence that was manifestly harsh and excessive in the circumstances.**
- 5. THAT the learned trial magistrate erred in law and fact in failing to consider the Appellant's mitigation in its entirety.**
- 6. THAT the learned trial magistrate erred in law and fact in convicting the appellant without first analyzing the evidence.**

Pending the hearing and determination of this appeal, the appellant has asked this court to release him on bail/bond pending appeal. He has specifically stated that he has an appeal with overwhelming chances of success. He has claimed that the plea was not equivocal and that the sentence is manifestly excessive. It is also said that unless the application is allowed the appeal will be rendered useless. The application is conceded by Mr. Rogoncho. I have carefully considered the oral submission of Mr. Mutai learned advocate who argued the application as holding brief for Mr. Orina learned advocated for the Applicant. I have also taken into account the grounds set out on the face of the motion and the facts deponed in the Applicant's affidavit. The principles to be considered in such applications were restated by the court of Appeal in **Ademba =VS= R (1983) K.L.R 442** as follows:

- “1. Bail pending appeal may only be granted if there are exceptional or unusual circumstances.**
- 2. The likelihood of success in the appeal is a factor taken into consideration in granting bail pending appeal. Even though the appellant showed serious family and personal difficulties, in view of the unlikelihood of success in this appeal, the application could not succeed.**
- 3. The Court of Appeal has no jurisdiction to entertain an appeal from a refusal of the High Court to grant bail to a convicted person pending an appeal against the decision to that court.**
- 4. The applicable law regarding applications to the High Court for bail pending appeal were sections 356 and 357 of the Criminal Procedure Code (cap 75) and not section 379(4) as stated by the appellant's advocate.”**

Let me now apply the aforesaid principles to this case. The first question is whether there are exceptional or unusual circumstances shown. The applicant did not rely on this ground when urging for the orders. I have examined the grounds set out on the petition of appeal. I have also critically examined the recorded proceedings and I am convinced that no exceptional nor unusual circumstances have been exhibited in this appeal.

The second principle to be considered is whether the appeal has overwhelming chances of success. The applicant states that he will show an appeal that the plea was unequivocal and that the sentence is manifestly excessive. When considering this principle, care must be taken so that the court should not make a conclusive opinion hence prejudicing the appellant's case by eventually influencing the mind of the court that will hear the appeal. I have looked at the grounds of appeal *vis-a-vis* the recorded proceedings and in my humble view, I don't think the appeal has overwhelming chances of success. The plea appears to be equivocal and the sentence within the limits set by law. Though Mr. Rogoncho conceded the application, this court still retains the discretion to consider the motion on its merits. I think the learned prosecution counsel wrongly conceded the motion. The application for bail/bond pending appeal has no merit. The same is dismissed with no order as to costs.

Dated, signed and delivered this 20th day of September 2013.

J.K.SERGON

JUDGE

In open court in the presence of

Mr. Mutai h/b for Mr. Orina for the Appellant

Mr. Mutei for the Respondent

Mr. Koech- court clerk