

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 490 OF 2013

PATRICK MUNA WAWERU.....
APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

By a Notice of Motion dated 18th September, 2013 brought to court under **Section 357(1)** of the **Criminal Procedure Code**, the appellant applied to be admitted to bail pending the hearing and determination of his appeal. He is of the opinion that since his appeal is arguable and has high chances of success there is no justification for depriving him of his liberty.

The appellant's application originates from the conviction and sentence meted out against him in the **Kangema Senior Resident Magistrates Court Criminal Case No. 198 of 2013** in which he was charged with two counts of causing grievous harm contrary to **section 234** of the **Penal Code** and assault causing actual bodily harm contrary to **section 251** of the **Penal Code**. In respect of the first count, the appellant is alleged to have unlawfully grievously harmed one **Lucas Ndatha Waweru** on 5th July 2013 at Gacharagaini sub location in Murang'a County. The particulars of offence in respect the second count are that on the 5th day of July, 2013 at about 6 pm at Gacharagaini village in Murang'a County, the appellant unlawfully assaulted **Raphael Karanja Waweru** thereby occasioning him actual bodily harm.

When the accused was arraigned in court on 9th July, 2013 the charges were read and translated to him in Kikuyu language - a language that the court noted, he understood. He pleaded guilty to each of the counts and was accordingly convicted on his own plea of guilty. On 11th day of July, 2013 the prosecutor applied to amend the charge sheet, an application that the appellant did not object to. The charges and the particulars thereof in the amended charge sheet were again read and translated to the appellant in Kikuyu language; he pleaded guilty to both counts and again the learned magistrate entered a plea of guilty. The facts were read to the appellant; he confirmed them to be true. The learned magistrate again entered a plea of guilty on both counts and proceeded to sentence the appellant to four years imprisonment on the first count and two years' imprisonment in respect of the second count.

In the state counsel's view, it would appear from these set of circumstances, that the plea was unequivocal; however, the appellant's counsel contests this fact. He submitted that every element of the charge should have been read and explained to the appellant and that the admissions should have been qualified by additional information. He has also contested the manner in which the exhibits comprising the weapon with which the complainants were attacked and the P3 forms were produced in court as exhibits in support of the prosecution case. In this regard, counsel relied on the Court of Appeal decision in **Criminal Appeal No. 204 of 1986, Joseph Oduor versus Republic** in which the court decried the production of a medical report by a person other than the one who made the medical notes on the complainants' injuries. He also relied on the case of **Bukenya versus Uganda (1967) EA 341** in which an appeal was allowed because, amongst other reasons, the learned magistrate failed to admit a medical report as exhibit which, apparently was produced as exhibit to demonstrate that the complainant was

grievously harmed.

I understood the state counsel's response to the appellant's counsel's contentions to be that production and admission of exhibits in cases where an accused has admitted the charges is not subject to the same procedure or manner of proof as in a full trial where the state is enjoined to prove its case against the accused person beyond reasonable doubt. In the state counsel's opinion, the production of the medical reports and the slasher by the prosecutor and the subsequent admission of these instruments as exhibits by the court was only a confirmation of the facts as read by the prosecutor and which the accused himself had admitted. Accordingly, in the counsel's view there was neither procedural flaw nor miscarriage of justice. In the circumstances, the applicant's contention that the appeal is arguable and has high chances of success is not merited.

At this stage of the proceedings, it would be premature to make any conclusive remarks on the merits of the appeal; this court can only go as far as evaluating whether, in view of the submissions made, the application stands to the threshold required of an application for bail pending appeal. This threshold was referred to in the case of **Dominic Karanja versus Republic (1986) KLR at page 613** where the court of Appeal stated that the most important consideration in this regard is whether the appeal has high chances of success. Where the appeal has such chances, there would be no justification of depriving the applicant of his liberty. Other considerations would be exceptional or unusual circumstances and what would amount to exceptional or unusual circumstances would of course depend on the circumstances of each particular case.

Having looked at the record of the proceedings and the judgment of the trial magistrate, the grounds of appeal and the submission made by counsel for the appellant and the reply by the state counsel, I am not satisfied that there exists an appeal that can be said to have overwhelming chances of success that would warrant the appellant's freedom from prison pending its determination. Neither has it been demonstrated that there exists exceptional or unusual circumstances whose only mitigation is admission of the appellant to bail pending the determination of his appeal. His application must therefore fail and is accordingly rejected.

Dated, signed and delivered in Murang'a this day 25th day of October, 2013

Ngaah Jairus

JUDGE