

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCALLEANOUS APPLICATION NO.63 OF 2013

AMOS OCHIENGAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The applicant was an accused in Nyando Traffic Case No.537 of 2013 in which he faced four traffic charges of dangerous loading c/s 56(2) and (3) of the Traffic Act (Cap.403), carrying excess passengers under section 100(2) of the Act as amended by Act 2 of 2012, carrying uninsured passengers c/s 5(b) of the Insurance (Motor Vehicles Third Party Risks) Act (Cap 405) and operating a public service vehicle without a yellow band contrary to rule 70(1) of the Traffic Amendment Rules made under Cap 403. He pleaded guilty to each charge, was convicted and sentenced to a fine of Kshs.10,000/= in default 3 months in Count 1, Kshs.40,000/= in default one year in Count 2, Kshs.20,000/= in default 6 months in Count 3 and Kshs.2,000/= in default 30 days in Count 4. He was aggrieved by the conviction and sentenced and preferred an appeal. He seeks to be released on bail pending the hearing and determination of the appeal.

During trial an accused is constitutionally entitled to be released on bail. Where the state opposes his release it must call compelling evidence. The reason for this is that he is presumed innocent until he is proved, or pleads, guilty. Where he has been convicted and sentenced, the presumption is that he has been properly convicted and sentenced. The onus is therefore on him to show why he should be released on bail (RAGHBIR SINGH LAMBA .V. REPUBLIC [1958] EA 337). Such person can only be released on bail where there are exceptional or unusual circumstances. The appeal should have overwhelming chances of success.

Mr. Jamsumba argued the application for the applicant. The same was conceded in part and opposed in the other.

During plea, the trial court read the charges to the applicant to which he replied “It is true” on each count. When the prosecutor was asked to narrate the facts his answer was “Facts as per the particulars of the charge in each count.” A conviction followed. There was the complaint that the plea was equivocal and reference made to the decision in ADAN .V. REPUBLIC [1973] EA 445). This is not the time to pass judgment on the matter as that will be done during the hearing and determination of the appeal. All that I wish to say is that, having considered the application and heard counsel on both sides, I accept that the appeal has overwhelming chances of success and therefore the applicant is entitled to bail.

I ask that the applicant pays cash bail of Kshs.10,000/- to await the hearing and determination of the appeal. He will appear before the Deputy Registrar to be given a mention schedule.

Dated, signed and delivered this 15th day of October, 2013

A. O. MUCHELULE

J U D G E