

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 178 OF 2013

(An appeal against both conviction and sentence of Senior Principal Magistrate's court at Vihiga in Criminal Case No. 962 of 2013 [S. N. MWANGI, AG. SRM) delivered on 26th September, 2013)

1. CHARLES KISANYA)

2. EDWARD ODHIAMBO)
APPELLANTS

VERSUS

REPUBLIC
RESPONDENT

RULING

This is an application dated 3rd October, 2013 filed by S. K. Ombaye & Company advocates on behalf of the two appellants. It is an application for bail pending appeal.

The application was brought under Section 357 (1) of the Criminal Procedure Code (Cap. 75). Having perused the file, I have seen a petition of appeal filed in respect of the conviction and sentence in Vihiga Senior Principal Magistrate's court criminal case No. 962 of 2013.

Mr. Ombaye, learned counsel for the appellants made submissions in support of the application. Ms. Opiyo learned Prosecuting Counsel opposed the application.

In an application for bail pending appeal, the main consideration is whether the appeal has overwhelming chances of success. The appellants herein were represented by Mr. Lugadiru advocate when they were charged, pleaded to the charge, and were convicted and sentenced. No objection to the proceedings, as they progressed, was raised by counsel and recorded. The appellants have now appealed through a different advocate, which is their right.

Are there overwhelming chances of success in the appeal? In my view, the appeals on conviction are arguable. However, there is no fact that convinces me, at this stage, that the appeals on conviction have overwhelming chances of success.

The sentence, though it is actually lawful, appears to be on the higher side for first offenders. The appellants are likely to have served the entire sentences before the appeal is heard and determined. In that event, the appeals will be rendered academic. On this basis alone, I am of the view that the appellants be granted bail pending appeal, on account of sentence, as there are overwhelming chances of deduction of the same.

Consequently, I grant the appellants bail pending appeal. The appellants will be released on bail pending appeal on each signing a bond of Kshs.100,000/= with one surety of similar amount, or on each paying a cash bail of Kshs.50,000/=.

Mention of 26th February 2014. Appellants to attend mention.

Dated and delivered at Kakamega this 25th day of November, 2013

George Dulu

JUDGE