



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
CRIMINAL APPEAL NO. 21 OF 2013

1. ABDALLA KIRAO MKARE WANJE
2. ALI KIRAO WANJE
3. EMMANUEL MLEWA MKARE
4. SIRIA NGUMBAO CHARO
5. LILIAN KAZUNGU..... APPELLANTS

VERSUS

REPUBLICRESPONDENT

(From the Conviction and Sentence in Criminal case No. 411 of 2006 Malindi Chief Magistrate's Court –
Hon. Shiundu - PM)

RULING

Before this Court is a second application for bond pending appeal expressed to be brought under section 357 of the Criminal Procedure Code.

The grounds are that the appellants have appealed from the decision and Judgment of Hon. Shiundu Principal magistrate delivered on 21st March, 2013.

Further that the appeal has high chances of success and that for the seven (7) years that the case was pending hearing and determination the appellants were out on bond and at no time did they abscond.

I have heard Mr. Shimaka Advocate for the fifth appellant and allowed Mr. Otara for 1st, 2nd, 3rd and 4th Appellants to file written submissions which he did and which I have had occasion to peruse.

This application is opposed and Mr. Jami prosecution counsel has served the appellants a Notice of enhancement of Sentence from fifteen (15) years to life imprisonment. I have perused the lower court record of proceedings, the pre bond report and the ruling of my sister Meoli Judge on the substantive application for bond pending appeal. She did make a finding that she was not persuaded that the appeal preferred has an overwhelming chance of being successful and she proceeded to reject the application.

There is no evidence that has been adduced to the effect that between the time of making her ruling and now, there have arisen other novel factors to persuade this Court to arrive at a different conclusion. I have also noted the concerns raised in the pre-bond report and I am of the considered view since the appeal has been filed and a date for hearing has been fixed the case should proceed to hearing of the substantive appeal. The application for bond pending appeal is rejected for now. The matter to proceed to hearing on 24th February, 2014 as earlier fixed.

Ruling delivered dated and signed tis **11th** day of **December, 2013**.

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M. MUYA

JUDGE

11TH DECEMBER, 2013

In open Court in the presence of:-

Counsel for the appellants Mr. Otara for 1st, 2nd, 3rd and 4th

Mr. Shimaka for 5th Appellant

Court clerk Musundi

11th December, 2013

Before M. Muya- Judge

Mr. Otara for 1st, 2nd, 3rd and 4th Appellants

Mr. Shimaka for the 5th Appellant

Mr. Otara: We had filed a motion which was served on the Director of Public Prosecution.

Mr. Otara: We pray to be served with the record of proceedings

Court: Deputy Registrar to ensure that Counsels are served with record of proceedings.

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M. MUYA

JUDGE

11TH DECEMBER, 2013.