



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL APPEAL NO. 149 OF 2011

JONNES MUMO MUTIE APPELLANT/APPLICANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from the judgment and conviction of Mr S.M. Mungai SPM delivered on 21/07/2011 in Machakos Traffic Case No. 10 of 2010)

RULING

Before me is an application by way of Chamber Summons dated 16th August 2011. It was filed under Section 357 of the Criminal Procedure Code (Cap 75 Laws of Kenya). It is an application seeking that the Applicant be released on bail pending appeal. The application has grounds on the face of the Chamber Summons. It was filed with an affidavit sworn on 16th August 2011 by the Applicant.

Counsel for the Applicant Mr Mulei, also addressed the court in support of the application. Counsel emphasized that the Applicant was sentenced to serve two years imprisonment, which was a short sentence likely to be served before the appeal was heard and determined.

The application is opposed. The State Counsel, Mr Mukofu, submitted that the Applicant was on the wrong side of the road, when the fatal accident occurred, and that two lives were lost. Counsel appreciated that the sentence of two years imprisonment was pronounced in July 2011.

This is an application for bail pending appeal. The primary consideration by the court in such an application is whether the appeal has overwhelming chances of success – see SOMO –VS- REPUBLIC (1972) EA 476.

The Applicant’s Counsel has emphasized the shortness of sentence, and that it was drizzling at the time of accident and that the driver of the other vehicle (land rover) was driving at high speed. In my view, all three arguments do not assist the Applicant. Shortness of sentence *per se* is no ground for granting bail pending appeal; as sentence is presumed to be legal. The Applicant has not shown that the sentence imposed is illegal.

On the speed, that is a question of fact. From the record, it appears that the Applicant was on the wrong side of the road. Primarily, he should have been the one to give way. The rain drizzle also meant that all the drivers had to be extra careful as visibility must have been reduced. Nothing unusual in favour of the Applicant has been demonstrated that would give his appeal overwhelming chances of success.

Indeed, the Applicant has filed a petition of appeal. It is an arguable appeal. However, the Applicant has not demonstrated that the appeal has overwhelming chances of success. Therefore, this application for bail pending appeal will fail.

Consequently, I find no merits in the application and dismiss the same. I however order that appeal be fixed for hearing on priority basis.

Dated and delivered at Machakos this **28th** day of **February** 2012.

George Dulu

Judge

In presence of:-

Mr Mulei for the Applicant

Mr Mukofu for State

Nyalo – Court clerk.