



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION NO. 110 OF 2012

HASSAN ABDULLAHI ABDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant, **HASSAN ABDULLAHI ABDI**, was convicted for the offence of Malicious Damage to property **contrary to section 339 (1) as read with section 339 (3) of the Penal Code**. The trial court then sentenced him to 3 years imprisonment.

Having lodged an appeal to challenge both the conviction and sentence, the applicant now seeks bail pending the hearing and determination of the said appeal.

The applicant is said to have been in a group of about 35 people who demolished the complainant's house. The demolition is said to have taken place on 1st May 2011, at Bulla Geneva, in Mandera.

Of the 35 people who participated in the demolition, six (6) were arrested and charged. However, only two (2) of the six persons were convicted.

The two included the applicant, who had been the 5th accused during the trial. Each of the two convicted persons was sentenced to 3 years imprisonment.

The applicant has filed an appeal to challenge both the conviction and sentence. And whilst awaiting the hearing and determination of the said appeal, the applicant now seeks bail.

He submitted that his appeal has overwhelming chances of success.

As far as the applicant is concerned, the identification was doubtful, as the demolition took place in an incomplete house, which had no lighting. He also said that none of the alleged witnesses had known him prior to the incident.

In any event, he was said to have been at Emoly, which is a township situated about 250 kilometres from Mandera, where the incident took place.

The respondent conceded the application. Ms Maina, learned state counsel, submitted that the appeal had good chances of success.

At this stage, it is important that the court does not make findings that will put the Judge who will hear the appeal, in a difficult spot.

I will therefore not spell out herein my analysis of the submissions on the strength or otherwise of the appeal, save that I consider the appeal to have a reasonable chance of success. It is therefore in the interest of justice to grant bail to the applicant.

I now order that the applicant be set free pending the hearing and determination of his appeal, if he pays a cash bail of Kshs.150,000/. In the alternative, he may execute a Personal Bond of Kshs.300,000/- with one surety of like sum.

Dated, Signed and Delivered at Nairobi this 26th day of April, 2012.

.....
FRED A. OCHIENG
JUDGE