



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

Criminal Appeal 157 of 2011

PETER MWIRIGI KITHIAAPPELLANT

VERSUS

REPUBLICRESPONDENT

(An appeal from the judgment of B. Ochieng P.M. delivered on 28.10.2011 in Meru Criminal Case No. 249 of 2011)

R U L I N G

The appellant has through his advocate Mr. Muriithi applied to be admitted to bail pending the hearing and determination of his appeal. The appellant was arraigned before the Chief Magistrate's court Meru charged with one count of robbery with violence contrary to section 296(2) of the Penal Code. He was convicted by the Chief Magistrates Court of the charge and sentenced to suffer death on the 28th October, 2011.

The appellant was dissatisfied with the conviction and sentence by the lower court and has now filed his petition of appeal in which he is relying on seven grounds. The appellant also filed a notice of motion under certificate of urgency. He is seeking to be granted bail pending appeal. In the notice of motion the appellant relies on four grounds as follows:

- (a) That the appeal has overwhelming chances of success.**
- (b) That unless the applicant is released on bond/bail he will suffer irreparable damages.**
- (c) That the applicant is ready to abide to any bond/bail term is so granted.**
- (d) That the applicant is of more useful value while out on bond/bail other than being in prison custody.**
- (e) And other ground to be adduced at the hearing thereof.**

Mr. Muriithi for the appellant submitted that the appeal as filed by the appellant has high chances of success and raises pertinent issues. Counsel submitted that identification was not favourable as it was made at night. Counsel also submitted that the ingredients of the offence were not adequately proved at the trial. Mr. Mungai for the State relied on a replying affidavit sworn by Mr. Mutende dated 30th January 2012. Under paragraph 3 Mr. Mutende avers that the appellant has not satisfied that there is an overwhelming probability that the appeal would succeed. Under paragraph 4 Mr. Mutende deposes that the appellant has not shown the existence of compelling circumstances such as illness, loss of a job and would compel the court to grant bail. Under paragraph 5 Mr. Mutende deposes that the appellant has not demonstrated to this court how his constitutional rights have been struppled upon as alleged under paragraph 2 of the supporting affidavit.

I have carefully considered the application for bail pending appeal, the applicant should demonstrate that his appeal has high chances of success among others. Looking at the application the grounds on the face of the application the only ground relied upon by the appellant is that the appeal has high chances of success. In the supporting affidavit under paragraph 4 the appellant deposes that the appeal has overwhelming chances of success and is arguable on both points of law and fact. Mr. Muriithi for the appellant did not substantiate this averment in his submissions in support of the application. All Mr. Muriithi submitted were bare statement without any demonstration of substance.

I have looked at the judgment of the lower court. In order not to preempt the appeal all I wish to state is that I did not see anything that would justify a conclusion that the appeal has overwhelming chances of success. That is not to say that it is not arguable. At this stage it is my view that the appellant should not be admitted to bail pending appeal but should remain in custody to wait the hearing of this appeal. The appellant's application for bail pending appeal is therefore dismissed.

DATED SIGNED AND DELIVERED THIS 7TH DAY OF JUNE, 2012.

LESIIT, J
JUDGE.