



JOSEPH KIOKO ..... APPELLANT/APPLICANT

VERSUS

REPUBLIC ..... RESPONDENT

### RULING

Before me is a Notice of Motion dated 26<sup>th</sup> June 2012, filed by the appellant/applicant Joseph Kioko. The application was filed under section 357 of the Criminal Procedure Code (Cap 75). It seeks for orders that:-

**“this court be pleased to admit the applicant on bond/bail pending the hearing and determination of the appeal filed herein.”**

The application was filed with an affidavit sworn on 26<sup>th</sup> June 2012, by Andrew Makundi Advocate for the applicant. It was deponed in the said affidavit that the applicant was sentenced on 20/6/2012 to serve twenty (20) months imprisonment. That he has appealed against conviction and sentence. That the appeal has overwhelming chances of success. That if the appellant/applicant was not released on bail or bond, he is likely to serve the sentence or a substantial part of the same before the appeal is heard and determined.

On the hearing date, Mr Makundi for the applicant submitted that the sentences imposed were not clear as to whether they were consecutive or concurrent. Counsel also argued that the facts did not disclose any offence. Infact the applicant assisted the Kenya Wildlife Service personnel to find the trophies. The plea on the facts was not unequivocal. In any case, the applicant should have been fined.

Learned State Counsel Mr Mwenda, opposed the application. Counsel submitted that the appeal was merely arguable. No overwhelming chances of success had been demonstrated. Counsel contended that the appellant had pleaded guilty in Kikamba language, which he understood. Counsel also submitted that sentencing was discretionary. If there was an error in the sentencing, the same was correctable under section 382 of the Criminal Procedure Code. Otherwise, the appeal can also be heard on priority basis due to the short sentence imposed.

This is an application for bail pending appeal. In the case of **Somo –vs- Republic (1972) EA 476** the High Court held that the principles to be applied are:-

- 1. Whether there are exceptional or unusual circumstances.**
- 2. That the appellant is of good character, that the appeal has been admitted for hearing, that the offence did not involve personal violence are not exceptional or unusual circumstances.**
- 3. The most important ground is that the appeal has an overwhelming chance of being successful, in that case there is no justification for depriving the applicant of his freedom.**
- 4. On the facts there was no overwhelming probability of success.**

It is clear from the above reasoning that the most important consideration in an application for bail pending appeal, is whether the appeal has overwhelming chances of success.

I have perused the record of proceedings herein. I have also perused the draft grounds of appeal. The appellant together with another were charged with three counts under the Wildlife Conservation and Management Act (Cap 376). The charges were read and elements explained. Both accused are recorded as having stated in Kikamba language that **“it is true”**. A plea of guilty was entered against both.

The facts were then given by the prosecutor, and both said that the facts were true. They were convicted and sentenced.

In giving a summary of the facts, the prosecutor does not appear to have stated whether the appellant herein was in possession, or was a dealer, or knew and failed to make a report to the authorities on the whereabouts of the trophies in question. This leaves a doubt in my mind, as to whether the facts given by the prosecution disclosed any offence against the applicant. My view is therefore that the appeal has overwhelming chances of success. On that account, there is no point of detaining the applicant in custody. I will grant bail pending appeal.

For the above reasons, I allow the application and grant the applicant bail pending appeal. The applicant will execute a bond of Kshs.300,000/= with one surety of similar amount. He will also appear in court or before the Deputy Registrar at every mention and at the hearing of the appeal, and in default the bond will be cancelled.

Dated and delivered at Machakos this 2<sup>nd</sup> day of **August** 2012.

**George Dulu**  
**Judge**

**In presence of:**  
Nyalo – court clerk  
Counsel for Applicant – Mr Kitulu holding brief for Mr Makundi

Counsel for State – N/A  
Appellant/Applicant - present