



**REPUBLIC OF KENYA**

**High Court at Machakos**

**Criminal Appeal 115 of 2011**

**BOSCO MAKAU MBONDO ..... APPELLANT/APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

Before me is a Notice of Motion dated 20<sup>th</sup> June 2011 brought under section 356(1) of the Criminal Procedure Code (Cap 75 of the Laws of Kenya). The application seeks that the applicant BOSCO MAKAU MBONDO be granted bond pending the hearing of his criminal appeal No. 115 of 2011.

The application has grounds on the face of the Notice of Motion. The grounds are that:-

- (a) The appellant has an arguable appeal with very high chances of success.**
- (b) The offences for which the appellant/applicant was convicted are bailable according to Article 49 (1) (h) of the Constitution.**
- (c) The appellant/applicant has a surety and is willing to subject himself before this court at any time so required.**
- (d) The appellant/applicant is willing to comply with orders of this Honourable Court.**

The application is grounded on an affidavit sworn by Peter Nthenge Masila advocate on 20<sup>th</sup> June 2011. In the affidavit, it is deponed, *inter alia*, that the applicant was convicted of assault; that the applicant has filed an appeal which has overwhelming chances of success; that the offences are bailable; that the applicant was out on bail during the trial and complied with the terms and attended court.

At the hearing, Mr Musila for the applicant made submissions in support of the application. Counsel submitted that the applicant had already served more than one year prison sentence. The delay in filing the application was as a result of delay in typing proceedings. Counsel emphasized that the applicant was willing to comply with the terms that will be given by the court.

Learned State Counsel Mr Mwenda, submitted that the State was not opposing the application. Though he stated that they would file a written response, none was filed.

I have considered the application, documents filed and submissions of counsel for the applicant and the State. This is an application for bail pending appeal. The factors to be considered by the court in such an application have long been established. Several court cases have dealt with the mater. I only need to cite the case of **Somo –vs- Republic (1972) EA 476** in which the factors to be taken into account by the court in determining such an application were considered by the High Court. In the later case of **Dominic**

**Karanja –vs- Republic (1986) KLR 612**, the Court of Appeal stated:-

**“The most important issue was that if the appeal had overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional circumstances. The previous good character of the applicant and the hardships, if any facing his family were not exceptional or unusual factors. A solemn assertion by the applicant that he will not abscond if released, even if supported by sureties is not sufficient ground for releasing a convicted person on bail pending appeal.”**

I have perused the record and petition of appeal. I have also considered that the State does not oppose the application for bail pending appeal.

The applicant was convicted of two offences. He was sentenced to six years imprisonment on count 1, and five years imprisonment on count 2. Though the applicant states in the application that the appeal has overwhelming chances of success, the submissions do not seek to demonstrate this ground. His advocate emphasized the shortness of sentence. That *per se* is not an exceptional circumstance. The hearing of the appeal can be expedited. As stated in the case authorities cited above, the main consideration is whether the appeal has overwhelming chances of success. The applicant not having demonstrated the overwhelming chances of success, the application is bound to fail.

In the circumstances of this matter, I am of the view that the order that can serve the best interests of justice is to order expeditious disposal of the appeal. Otherwise the applicant has not established the threshold for grant of bail pending appeal.

Consequently, I dismiss the application for bail pending appeal. I order that the appeal of the applicant be heard expeditiously.

Orders accordingly.

Dated and delivered at Machakos this 27<sup>th</sup> day of **September** 2012.

**George Dulu**  
**Judge**

**In presence of:**

Mr Mwenda for State

Mr Musila for Applicant

Court clerk: Nyalo