

RONALD REAGAN LUBASO APPLICANT

VERSUS

REPUBLIC RESPONDENT

(Application for Bail pending Appeal under Article 49 (1) (h) of the Constitution

and Section 357 of the Criminal Procedure Code.)

R U L I N G

The appellant, **RONAD REAGAN LUBASO** was ON 25.5.12 convicted of unnatural offence Contrary to Section 162 (a) of the Penal Code and sentenced to ten (10) years imprisonment.

The appellant was aggrieved by the conviction and appealed to this court.

On 13.6.12, the appellant filed an application for bail pending appeal.

It is the applicant's contention that the offence is bailable. That he will not abscond bail and is ready and willing to abide by the terms and conditions set by this court and will not commit other offences while on bond. It is further contended that the appeal herein has high chances of success.

Although the grant of bail is a Constitutional right, the court has the discretion to grant or refuse bail depending on the circumstances of each case. The court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case or pending the hearing of an appeal. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic [1986] KLR 600**. The said principles include the following; the nature of the offence, the strength of the evidence, the character or behavior of an accused and the seriousness of the punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exists which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused will interfere with witnesses if he is released on bond.

Whereas the above principles are applicable in regard to applications made by accused persons seeking to be released on bail pending trial, the same principles are applicable when the court is considering whether to release an appellant pending the hearing of an appeal. In the case of an applicant seeking to be released on bail pending the hearing of an appeal, the court has to put into consideration the added fact that the appellant, having been convicted, is more likely, or will most likely have an incentive to abscond if he is released on bail.

Having carefully considered the facts of this application, it is clear to this court that the appellant will most likely abscond if he is released on bond pending the hearing and determination of the appeal. This is because the appellant has already been convicted and sentenced to ten years imprisonment. This court is unable to comment on the claim by the appellant that his appeal has high chances of success. This is because there is nothing in the petition of appeal that points to the likelihood that the appeal would succeed without this court having the benefit of hearing submissions during the hearing of the actual appeal.

In the premises therefore, the appellant's application to be released on bail pending the hearing of the appeal is unmeritorious and is hereby dismissed.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 20TH DAY OF SEPTEMBER, 2012

B. THURANIRA JADEN
JUDGE