



REPUBLIC OF KENYA

High Court at Eldoret

Criminal Appeal 173 of 2012

DERICK OGOLA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING:

The Applicant was charged with the offence of personating a Public Officer contrary to section 105 (b) of the Penal Code. This offence was count No. 1.

the Applicant on Count II was charged with the offence of being in possession of a firearm contrary to Section 89 (1) of the Penal Code.

The Applicant was convicted and sentenced to a total of nine (9) years imprisonment. Being aggrieved the Applicant filed Criminal Appeal No. 173 of 2012.

The Applicant comes to this court seeking to be admitted to bail pending Appeal.

At the hearing of the application Counsel for the Applicant submitted that on Count I there were material contradictions in the evidence of the key prosecution witnesses which raised doubt culminating in the failure by the prosecution to prove its case beyond reasonable doubt.

On Count II, Counsel submitted that the evidence of the ballistic expert was inconclusive as he did not confirm that the “firearm” found in the Applicants possession met the specifications of a real firearm.

On those two (2) grounds Counsel prayed that the application be allowed as the appeal had overwhelming chances of succeeding. Reference was made to the case of **FRANCIS AMAZIMBI MILIMO -VS- R. (HC MISC CR. APP. NO. 24/2006)** in support of the application for bail pending appeal.

Prosecuting Counsel for the State conceded the application on the grounds that the evidence adduced by the prosecution was insufficient to support a conviction on both counts and that the appeal had a high chance of succeeding.

After hearing the arguments of both Counsel and upon perusing the trial courts record of proceedings, this court is persuaded that the appeal has overwhelming chances of succeeding particularly on Count No. II

It is incumbent upon the prosecution to prove its case beyond reasonable doubt.

CONCLUSION.

For the reasons stated above, the application for bail pending appeal is hereby allowed.

The Applicant is hereby admitted to Bail/Band in the sum of Kshs 150,000/= with a surety of similar amount.

It is so ordered.

Dated and Delivered at Eldoret this 8th day of November 2012.

**A.MSHILA
JUDGE**

Coram: Before Hon. A Mshila J

CC: Andrew

Counsel for the Applicant: Marube

Counsel for the State: Chirchir holding brief for Kabaka.

**A.MSHILA
JUDGE**