



**REPUBLIC OF KENYA**

**High Court at Meru**

**Criminal Appeal 55 of 2012**

**ABDI RASHID NUNO.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

The appellant/applicant ABDI RASHID NUNO through a Notice of Motion dated 18<sup>th</sup> August, 2012 pursuant to Section 357 of the Criminal Procedure Code and Article 49(I),(h) of the Constitution of Kenya, 2010, sought that he be admitted to bail pending the hearing and final determination of this appeal upon such terms and/or conditions as the Honourable Court may find just and reasonable in the circumstances of the instant case. That in the alternative the sentence imposed on him be suspended pending hearing and determination of this appeal.

The application is based on grounds on the face of the application and supportive affidavit sworn by the applicant and annexures thereto. When the application came up for hearing Mr. Omari learned Advocate appeared for the applicant whereas the State was represented by Mr. Mungai learned State Counsel. The court heard oral submissions by both Counsel for applicant and State. Mr. Mungai learned State Counsel conceded to the application on basis of grounds No.12 and 13 of the supportive affidavit.

The applicant is seriously sick and his health has seriously deteriorated as he suffers from Tuberculosis and High Blood Pressure which illness the applicant averred is not compatible with congestion at the prison and in particular Meru G. K. Prison where the applicant is serving sentence. The applicant annexed bundle of treatment notes as "ARN 1(a)" which indeed confirms appellant's/applicants sickness.

The appellant/applicant has appealed against both conviction and sentence. The applicant/appellant was convicted of manslaughter contrary to Section 202(1) of the Penal Code and sentenced to serve 10 years imprisonment.

Section 357(1) of the Criminal Procedure Code provides:

***"357. (1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:***

***Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the***

***contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.”***

In the instant application the applicant did not file an application for bail at the subordinate court. The application is therefore properly before this court and this court shall accordingly consider the same. Under Article 49(I) (h) of the Constitution of Kenya, 2010 it provides:

***49. (1) an arrested person has the right—***

***(h) To be released on bond or bail, on reasonable conditions-***

***Pending a charge or trial, unless there are compelling reasons not to be released.***

Taking into account of the appellant's/applicant's affidavit dated 18<sup>th</sup> August, 2012 and the fact of the applicant's poor health and that the State Counsel is not opposed to the application and the existence of exceptional circumstances on the part of the appellant in that the appellant/applicant suffers from tuberculosis and other related illness which illnesses are incompatible with Kenyan prison atmosphere and which require home based care I am of the view that this application ought to be granted.

In my opinion, the modern practice as regards bail is that it should be granted in bailable offences and the same should be denied only in situations where there are exceptional circumstances against it such as where there is a real likelihood that appellant will not appear at the hearing of the appeal or where release of the appellant could expose him to attack or injuries by the family members of the complainant.

In the present application I find no compelling reasons for the appellant not to be granted bail. In the circumstances, in this matter, I grant the following orders:-

- 1. The appellant be and is hereby admitted to bail pending hearing and final determination of this appeal on his own bond of Kshs.100,000/= with one surety of similar amount.***
- 2. The appellant will be required to be reporting to the OCS of his nearest police station every 15<sup>th</sup> day of each month starting from first month of his release till this appeal is heard and determined.***
- 3. The appellant shall be attending hearing of the appeal once set down for hearing or mention.***

DATED, SIGNED AND DELIVERED AT MERU THIS 4<sup>TH</sup> DAY OF DECEMBER, 2012

**J. A. MAKAU  
JUDGE**

Delivered in open court in presence of:

1. Mr. Gichunge for the appellant/applicant
2. Mr. Mungai for the State

**J. A. MAKAU  
JUDGE**