



CRIMINAL LAW

- **What to consider in an application for bail pending appeal.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL CASE NO. 220 OF 2010

SIMON MUTHURI
APPELLANT

VERSUS

REPUBLIC
RESPONDENT

RULING

The appellant Simon Muthuri was convicted by the lower court of the offence of traffic narcotics drugs contrary to section 4 (a) of the Narcotic Drug and Psychotropic Substance Control Act No. 4 of 1994 . On being convicted on 2nd December 2010, he was sentenced to pay a fine of Kshs. 96,000/= and in default 12 months imprisonment. He has now made an application dated 14th January 2011 seeking that he be granted bail pending the hearing and determination of this appeal. In this appeal, he has challenged the lower court conviction and sentence. The court in considering this application should bear in mind what was stated in the case **Mundia vs. Republic** [1986] KLR 623 where it was held:-

1. *The Criminal Procedure Code (Cap 75) section 356 permits admission to bail pending appeal.*
2. *Admission to bail pending appeal is a discretionary power which the court must exercise judicially in accordance with laid down principles.*
3. *Once a person has been convicted and sentenced, his application for bail pending appeal will be granted only in exceptional circumstances.*
4. *There is a presumption that once a person is convicted he was properly convicted.*

5. *The chances of the appeal succeeding is a factor for consideration in arriving at a decision in an application for bail pending appeal.*

6. *Bail pending appeal may be granted where there is a risk that the sentence will have been served by the time the appeal will be heard but there must exist the major issue of overwhelming chances of the appeal in the first instance.*

The appellant's learned counsel Mr. Kirima stated in supporting the application that the appellant is challenging the judgment of the lower court. He stated that the appellant was arrested as he transported goods on behalf of a client but that when they were approached by police the client run away. He was arrested and charged with the offence that he was convicted. It was further stated that when the appellant went to prison to serve his sentence he became ill and for that reason, his counsel requested that he be released to enable him get medical attention. The learned state counsel Mr. Kimathi opposed the application for bail. He based his opposition to the fact that the appellant when stopped by the police attempted to run but was arrested. Mr. Kimathi argued that the attempt to run was not in line with innocence. Learned state counsel also submitted that illness was not a special consideration since the prison conditions have improved. I have considered the lower court's proceedings and at this stage on a prima facie basis, I find that there are no special circumstances to warrant the granting of bail pending appeal. It is stated that the appellant is unwell but his exact condition has not been disclosed in the application. There is therefore no special circumstances to warrant the granting of bail. The court takes judicial notice that the prison authorities do take those in prison who need medical attention to hospital for treatment even without the court making a specific order. It is for that reason that I reject the application of the appellant and dismiss that notice of motion dated 14th January 2011.

Dated, signed and delivered at Meru this 10th day of February 2011.

MARY KASANGO

JUDGE