



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CRIMINAL APPL. 616 OF 2011

CHRISTOPHER OSEI CANON.....APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Applicant, **CHRISTOPHER OSEI CANON**, was convicted on 2 counts of Trafficking in narcotic Drugs contrary to **section 4 (a) of the Narcotics Drugs and Psychotropic Substances Act No. 4 of 1994**.

On Count 1, he was sentenced to 15 years imprisonment, plus a fine of KShs.1,000,000/-, in default of which he would be imprisoned for one year.

On Count 2, he was sentenced to 15 years imprisonment plus a fine of KShs.3,093,300/-, in default of which he would serve one year in prison.

The learned trial magistrate ordered that the sentences of imprisonment would run concurrently, whilst the default terms would run consecutively.

Being dissatisfied with the conviction and sentence, the applicant has lodged an appeal to the High Court. Whilst awaiting the hearing and determination of the appeal, the applicant has asked this court to grant him bail.

When prosecuting his application for bail pending appeal, the applicant submitted that his appeal was very good. He says that there were very many contradictions in the case which the prosecution had put forward.

In an endeavour to demonstrate the alleged contradictions and the weakness in the prosecution case, the applicant pointed out that during the first five (5) days when he was in police custody, he did not emit any drugs from his body.

Thereafter, he was taken to the Kenyatta National Hospital, where he was admitted. He says that when he was taken to the hospital, he was unconscious. He therefore does not believe that he emitted the alleged 16 pellets of Heroin, because he cannot understand how he could have done so whilst unconscious.

Had he had the alleged 16 pellets of Heroin, the applicant believes that he would have emitted them during the first 5 days when he was in custody.

As he did not believe that the said 16 pellets of Heroin were obtained from his body, the applicant told this court that during his trial, he had asked the prosecution to produce the faecal matter from which they allegedly obtained the drugs. Notwithstanding his request that the excretion be exhibited before the trial court, the applicant says that that was not done.

It is his further case that the doctor who treated him did not testify. Instead, it was a different doctor who testified, and confirmed that the applicant had been unconscious from the date he was admitted at the hospital.

The applicant also submitted that if the Heroin pellets were recovered from his body the nurses who treated him at the hospital should also have given evidence at the trial. He finds it strange that it was only the police officers who testified about the alleged recovery of the drugs.

In answer to the application, Ms Mwanza, learned state counsel, submitted that the evidence regarding the manner in which the applicant was arrested, did not add up.

It was her position that the nurses who were at the hospital when the drugs were recovered, should also have given evidence.

As far as the respondent was concerned, it was not enough that the police officers and the applicant signed documents indicating that the drugs were recovered from the applicant.

It is trite law that a fact can be proved by one witness. Provided that the court believes the evidence of a witness, there was no need for a multiplicity of witnesses before the court can hold that the facts about which the witness testified had been proved.

In this case, it has not been demonstrated that the nurses at Kenyatta National Hospital, where the applicant was admitted, were present when the applicant emitted the pellets.

But even if the nurses had been present when the applicant emitted the pellets, it has not been demonstrated to this court that the court could only be persuaded that the applicant emitted the pellets if the nurses had given evidence about that fact.

The applicant was admitted to hospital when he was very weak. The trial court found that the applicant had refused to eat, hence his weakness.

To my mind, that would possibly explain why the applicant did not emit any pellets until he was admitted in hospital, where he was given medication to help him pass stool.

Having given due consideration to the evidence on record, I am unable to share the views of the applicant and the respondent, regarding the chances of success of the appeal lodged by the applicant.

Secondly, there was no real risk that the applicant would finish serving the sentence or that he would serve a substantial part thereof, before his appeal was heard and determined.

Thirdly, the applicant is a foreigner, who was arrested while in transit through Kenya. He was on his way from Ghana to Mauritius. If he was to be granted bail pending appeal, there would be a big practical problem about how the court would ensure that he makes himself available for the hearing and determination of his appeal. Indeed, I hold the view that if the applicant was granted bail, he would probably leave the jurisdiction of this court, for good. In other words, I find that the applicant is a high flight-risk.

For those reasons, I reject the application for bail pending appeal.

Dated, Signed and Delivered at Nairobi this 16th day of May, 2011

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FRED A. OCHIENG
JUDGE