



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO.39 OF 2011

(Appeal arising from WBY RMCR. NO.394 of 2011)

SAMUEL MUKANDA.....APPELLANT

VRS

REPUBLIC.....RESPONDENT

RULING

This is a ruling on an application seeking for bail pending appeal. Mr. Kiveu for the Applicant argued the application. The main reasons for seeking bail are that the appeal has high chances of success and that the case may take a long time to be heard.

Mr. Ogoti state counsel opposed the application on grounds that it is premature since the appeal has not been admitted.

The issues for this court to decide is whether the appeal is properly before the court and whether the applicant is entitled to bail pending appeal. The Applicant is seeking for orders of bail pending appeal has two options:

- a) *To file a miscellaneous application seeking such orders before the appeal is filed;*
- b) *To file an appeal and then put in an application for bail before the appeal is heard.*

There is no legal requirement that an appeal must be admitted before an application in the file is heard.

Furthermore the spirit of the new constitution is to afford more freedom to arrested persons and to convicts who as they await the hearing and determination of the appeal.

I find the application properly before the court and also meritorious. I allow the same accordingly. The Appellant shall be released on bond of Ksh.50,000/= with one suitable surety pending the hearing and determination of the appeal. The case will be mentioned once a month commencing 21/7/2011. The personal presence of the Appellant shall be required during mentions and hearing of the appeal.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered on the 21st day of June 2011 in the presence of the Appellant and the State Counsel Mr. Ogoti.

F. N. MUCHEMI

JUDGE