

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NO. 107 OF 2011

From original conviction and sentence in Cr. case No. 864 of 2010 at the Senior Resident Magistrate's Court at Gichugu

JOHN MURIITHI MWANIKIAPPELLANT
VERSUS
REPUBLIC..... RESPONDENT

R U L I N G

The Appellant was convicted by the Senior Resident Magistrate's court Gichugu of assault causing actual bodily harm contrary to section 251 of the Penal Code and was sentenced to serve 2 years in jail. The incident was on 4th September 2010 at night at Kianyaga Township and followed a drinking session at Waka bar. The complainant Simon Muriuki Gatimu was going home when he was attacked by the Applicant. He suffered a cut on the upper lip, on the right nose, on the left eyebrow, and on the left side of the hand and had a tender chest. The Applicant had been charged with grievous harm contrary to section 234 of the Penal Code but the magistrate convicted him on the lesser charge.

The Applicant raised an alibi defence which the trial court rejected. He was a first offender, a family man and was recovering from injuries suffered in a road accident. The injuries included a fractured hand.

In the Petition of Appeal he complained that he had been convicted on insufficient evidence, that his defence had not been considered and that the sentence meted out was manifestly excessive in the circumstances. He seeks to be released on bail pending the hearing and determination of the appeal.

The usual presumption is that the Applicant has been properly convicted and sentenced, and can only be released on bail if it is shown that the appeal has overwhelming chances of success. (**DOMINIC KARANJA –VS- REPUBLIC [1986] KLR 612**). Mr. Mugo prosecuted this application on his behalf and asked the court to find that the appeal had high chances of success. He emphasized that given the injuries suffered by the complainant and the issues raised in mitigation, the sentence meted out was excessive. Ms Matiru did not oppose the application and agreed with Mr. Mugo that it was likely that the entire sentence will be served before the appeal is heard and determined. I consider that where it has been shown that the appeal will be successful in the sense that at least a non-custodial sentence may be preferred then an occasion has arisen for bail pending the appeal.

I admit the Applicant to bail. He will deposit cash bail of kshs.30,000/= and appear before the Deputy Registrar for mention.

DATED, SIGNED AND DELIVERED AT EMBU THIS 20TH DAY OF SEPTEMBER 2011.

A.O. MUCHELULE

JUDGE