

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL APPEAL NO. 93 OF 2011

(Being an Appeal from the Judgment of the Principal Magistrate S.M. MOKUA in Criminal Case No. 212 of 2010 at Siakago – PM Court)

PETERSON

MUTURI.....APPLICANT/APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

NT

R U L I N G

This is the Appellant’s application for bond pending appeal under Section 357 of the Criminal Procedure Code. He was on 2/6/2011 convicted on an offence of attempted arson and sentenced to 3 years imprisonment. I also note from the record that the Appellant is a father to the complainant. The submission by Mr. Kariithi for the Applicant is that the Applicant has mental illness, and his condition could deteriorate in prison. The state counsel submitted that there was nothing extra ordinary about the Applicant’s condition.

The document APK2 from Mathari Mental Hospital has not been challenged by the state. I therefore take it to be genuine. I have read through the evidence on record and noted what the witnesses stated. I note that the applicant did not offer any evidence in his defence. The presumption is that once a person is convicted he was properly convicted. Ref. *Mundia Vs Republic [1986] KLR 623*. It was for the Applicant to demonstrate that his appeal has very high chances of success.

The documents A.P. Kariithi 2 shows the Applicant was seen at Mathare on 15/6/2011 where he had been imprisoned on 2/6/2011. This confirms that the prison is capable of ensuring he is taken for treatment.

In the case of *Dominic Karanja Vs Republic [1986] 612*. It was held that ill health per se would not constitute an exceptional circumstance where there exist medical facilities for prisoners. That is the case here. I decline to grant the orders sought. I direct that matter be listed as the records are ready.

DATED, SIGNED AND DELIVERED AT EMBU THIS 26TH DAY OF OCTOBER 2011.

**H.I. ONG’UDI
JUDGE**