



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NOS. 123 & 124 OF 2011 (CONSOLIDATED)

GALVIN RUSHATI.....1ST APPELLANT

DUNCUN RUSHATI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from a conviction and sentence in Criminal Case No. 634 of 2011 of the Principal Magistrates Court at Kajiado (Hon. Mr S.O Temu RM) dated 13th June 2011)

In

(RM'S CR.C. No. 634 of 2011 (KAJIADO))

R U L I N G

(As Consolidated on 14/11/2011)

Before me are two applications High Court Criminal Applications Numbers 123 and 124 of 2011. They arise from the same proceedings in the subordinate court that is Kajiado Resident Magistrate's Court Criminal Case No. 634 of 2011. The Applicants are GALVIN PUSHATI and DUNCUN PUSHATI respectively.

The applications were consolidated and heard together.

The applications were brought by way of NOTICE OF MOTION under ARTICLE 49 and 50 of the Constitution of Kenya and Sections 198 (1) 350 (1) and (2) (iv) and (v) and Section 351 of the Criminal Procedure Act (Cap 75 Laws of Kenya).

The prayers are that the Applicants be granted bail pending determination of appeal. In the alternative, if the court is unable to grant bail pending appeal that the criminal appeal filed be heard as a matter of urgency on priority basis. Thirdly, that the court grants any order or orders which it may deem fit and just to grant in the circumstances.

The applications have grounds on the face of the notices of motion. Supporting affidavits were filed. Counsel for the Applicants Mr Naikuni made submissions to court in support of the applications. Counsel relied on a number of case authorities. The State Counsel Mr Mukofu submitted that the subordinate court did not have jurisdiction to deal with the criminal charge. Counsel requested that the appeal be dealt with on priority basis.

I have considered the application, documents filed and submissions made on both sides. The Applicants were charged with causing grievous harm contrary to Section 234 of the Penal Code (Cap 63). Their plea was taken before S.O. Temu Resident Magistrate Kajiado. They were said to have pleaded guilty. However, the Applicants claim that they did not understand the language used in court that is English and Kiswahili. They claim to be illiterate Masai.

Indeed, the language recorded as having been used in court was English/Kiswahili. The Applicants were sentenced to serve four (4) years imprisonment. They have now filed appeals.

Given the circumstances of this matter, and especially the issue of language used in the subordinate court as well as the short sentence of 4 years imprisonment from 13th June 2011, I will order that the appeals of the Applicants be heard on priority basis. Language is a crucial part of our criminal justice system and fair trial – See SWAHIBU SIMBAUNI SIMIYU –vs-REPUBLIC – Kisumu Criminal Appeal NO. 243 of 2005. I find no persuasive ground to grant bail to the Applicants pending appeal, however.

In the result, the applications are successful to the extent that I order that the appeals will be heard on priority basis. Subject to their admission, service and availing the subordinate court's file, the two appeals will be heard at the next single judge criminal appeals session at Machakos.

Dated and delivered at Machakos this 14th day of **December** 2011.

George Dulu

Judge

In presence of:-

For the Applicants:

For State:

Court clerk: