

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET Criminal Appeal 181 of 2009

STANLEY CHEBOI KANDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

This is an application for bail pending appeal and it is brought under section 357 of the Criminal Procedure Code cap.75 of the Laws of Kenya. It is premised on the grounds that the Applicant has preferred an appeal which appeal has overwhelming chances of success. That he is an old man of seventy and has failing health which has further deteriorated upon his incarceration. That he is a man of good reputation and cannot abscond from the court process as he was on a personal bond during his trial for two years and never failed to attend court. That he is ready to provide securities as may be directed by the court and his continued stay in prison is unfair as he has an appeal with overwhelming chances of success. He has sworn the affidavit in support of his application in which he merely reiterates the above grounds on oath.

At the hearing his advocate Mr. Kasavuli submitted that the appeal has high chances of success and more so because there was breach of the Appellant's constitutional rights. That at trial the defence evidence was ignored and prosecution evidence was given undue weight. That the Appellant's mitigation was ignored by the trial court and the sentence meted out to the Appellant was very harsh. He placed reliance on the authority of ABDI V REPUBLIC MOMBASA MISC.CR.APPLICATION NO.12 OF 191 and CHIMAMBAI V REPUBLIC MOMBASA CRIMINAL APPEAL NO.156 OF 1969. Counsel added that the appeal is not yet admitted and it could take along time before the appeal is heard.

Learned state counsel Mr. Chirchir appearing for the Republic opposed the application on the grounds that his perusal of the lower court proceedings and judgment did not reveal to him a case with overwhelming chances of success, infact to him the case has no chances of success. He further submitted that no particular constitutional right of the accused was shown to have been breached and there was no likelihood of the Appellant serving a substantial part of his sentence before the appeal was heard and determined.

On my part I have thoroughly perused the lower court proceedings and judgment and I have carefully considered submissions by both counsel here appearing and I have considered the authorities I was referred to and several others on this subject of the grant of Bail pending appeal. The guiding factors whether or not a convicted person may be admitted to bail pending appeal are that the appeal has overwhelming chances of success and that there exists exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice that the Appellant be admitted to bail. Ill health per se and the assertion that the Applicant will abide by bail terms are not exceptional or unusual circumstances see the case of DOMINIC KARANJA V REPUBLIC NAIROBI CRIMINAL APPLICATION NO. 14 OF 1986. It is true that anticipated delay in the hearing of the appeal together with other factors could constitute good grounds

for the grant of bail. In this case such combination of anticipated delay and exceptional or unusual circumstances of other factors is missing. Further the assertion that the Appellant's evidence and mitigation were ignored at trial is not supported by the record of the proceedings in the lower case. This is not an appeal, on the material/presented to this court that has an overwhelming chance of success. I do not see that there would be any delay in hearing this appeal as this court indeed has heard appeals filed during September 2009. I am not persuaded, in the whole, that I have a reason to exercise my judicial discretion in favour of the Applicant and consequently the Application under consideration is dismissed.

DATED AND DELIVERED AT ELDOET THIS 25TH DAY OF FEBRUARY, 2010

P.M.MWILU
JUDGE

IN THE PRESENCE OF

Paul Ekitela - Court Clerk

Rotich holding brief for Mr. Kitiwa for the Advocate for Applicant

Mr. Kabaka for Republic.