

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 60 of 2010

EDWIN NDEGWA JUSTUS.....APPLICANT APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Appeal from the original conviction in the Chief Magistrate's Court
at Nyeri in Criminal Case No.651 of 2008
dated 10th March 2010
by Joshua Kiarie, Senior Principal Magistrate)*

RULING

EDWIN NDEGWA JUSTUS hereinafter referred to as the applicant, was tried on a charge of house breaking contrary to *Section 304 (1)* and stealing contrary to *Section 279 (b)* of the Penal Code. After undergoing a trial, the Applicant was convicted and sentenced to a fine of Ksh.60,000/= in default 12 months imprisonment on each limb of the charge. The Applicant was dissatisfied hence this appeal.

The Applicant has now taken out the motion dated 24th March 2010 pursuant to the provisions of *Section 357 (1)* of the Criminal Procedure Code in which he seeks to be admitted to bail pending appeal. The motion is the subject matter of this ruling. It is the submission of Mr. Wahome, learned advocate for the Appellant, that the appeal has high chances of success. It is also argued that the Appellant is due to join college in the month of May 2010 hence unless he is released on bond pending appeal he is likely to lose that chance. Mr. Orinda, learned Provincial State Counsel, was of the same view as that of Mr. Wahome.

When dealing with an application for bail pending appeal, the principles are well settled. First, an applicant must show that the appeal has overwhelming chances of success. Secondly, an applicant must show the existence of exceptional or unusual circumstances upon which the court can rely to find that it is in the interest of justice to grant bail.

It would appear from the aforesaid principles that the Court must be convinced that the appeal has to have overwhelming chances of success and not just merely raising arguable points. I have examined the grounds of appeal set out on the Petition of Appeal. Two main grounds turn out: First, is that the evidence tendered by the prosecution did not establish the offences of house breaking and theft. Secondly, that the evidence relied upon to convict the Appellant were contradictory. After a careful examination of the aforesaid grounds vis-à-vis the recorded evidence, I am convinced that the appeal has overwhelming chances of success. I therefore see no reason why the Applicant should be deprived of his liberty pending appeal. I hereby admit the Appellant to bail pending appeal. The Appellant/Applicant should be released upon signing a bond of Ksh.50,000/= before the Deputy Registrar of this court with one surety of like sum.

Dated and delivered at Nyeri this 7th day of April 2010.

J. K. SERGON

JUDGE

In open court in the presence of Miss Ngalyuka for the State and Mr. C. Kariuki holding brief Wahome for Applicant.