

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Criminal Appeal 4 of 2010

AARON MWENDA APPELLANT
VERSUS
REPUBLIC RESPONDENT

RULING

The appellant has preferred this appeal against the decision of Senior Resident Magistrate Maua in Criminal Case No. 18 of 2010. The appellant in that case pleaded guilty to the offence of assault causing actual body harm contrary to section 251 of the Penal Code. The court sentenced him to serve a 2 years imprisonment. His appeal therefore can only be relation to the sentence. He has in the meanwhile filed a Notice of Motion dated 2nd February 2010 seeking bail pending appeal. In his affidavit in support, he deponed that when the offence occurred he had been requested to take the complainant to join his fellow youths who had been circumcised together. When they went, the complainant was injured in circumstances that were not clear. He therefore said that he was a victim of circumstances. He stated that he suffers from asthma and bronchitis and to that end annexed documents to prove his ailment. Those documents shows that the appellant was treated at Ministry of Health Laare Heath Center on 29th January 2010. He was indeed diagnosed to suffer broncho asthma. The appellant in the end in his affidavit in support stated that his appeal has high chances of success. The application was not objected to by the state. The case of **Somo Vs. Republic** [1972] E.A. 476. It was stated that an appellant wishing to obtain bail pending appeal ought to show that his appeal has overwhelming chances of success. In the case of **Kaguma Vs. Republic** [2004] 1 EA the court held:-

“For the applicant to obtain bail pending appeal, he had to demonstrate overwhelming chances of success. Minor relevant considerations would be whether there were exceptional or unusual circumstances. Previous good character of the applicant, hardship facing the wife and children, mere ill health, or even a solemn assertion that the applicant would not abscond were not exceptional circumstances.”

It is not the basis to grant bail pending appeal that the applicant suffers from an ailment. It is clear from the documents annexed to the application that the appellant was treated whilst he was in custody at Ministry of Health Centre. The same health center can treat him if he needs such treatment. Bearing that in mind, and having perused the lower court record, I decline to grant the applicant bail pending appeal. The Notice of Motion dated 2nd February 2010 is dismissed.

Dated and delivered at Meru this 18th day of June 2010.

MARY KASANGO
JUDGE