

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Criminal Appeal 86 of 2010

BENSON KARUTI APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

The appellant has appealed in this court against the judgment of Maua Senior Principal Magistrate Criminal Case No. 2500 of 2008. The appellant has appealed against both conviction and sentence. The appellant was charged in the lower court with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He was convicted as charged and was sentenced to 6 years imprisonment. He has now filed a Notice of Motion dated 3rd May 2010 seeking that he be released on bail pending appeal. In the affidavit in support of that application, the appellant stated thus:-

3. *That I have been advised by my current advocates on record which information I verily believe to be true that my appeal against conviction and sentence has high chances of success and I thus pray for my release on bond pending hearing and determination of the appeal herein.*
4. *That no eye witness was ever called to testify for the offence to have been proved.*
5. *That I was held in the police cells for a period of 17 days before being presented in court for plea for I was arrested on 27th July 2009 and taken for plea on 13th August 2009.*
6. *That my constitutional rights were violated for there was no explanation given as to why I was not produced in court within 24 hours as stipulated.*

The state in response to the application in opposing the same stated that there was overwhelming evidence against the appellant that was presented by the prosecution. On the allegation that the appellant was kept in custody for a period longer than the 24 hours provided under Section 72 (3) (b) of the Constitution, the state submitted that the appellant initially was arrested on suspicion of murder. Luckily for him, according to the state counsel, he was instead charged with manslaughter. The principles of granting bail pending appeal were set out in the case **Somo Vs. Republic** [1972] E.A. 476. The court held that an applicant seeking bail pending appeal had to show his appeal has overwhelming chances of success and in which case he ought not to be kept in prison whilst awaiting the hearing of his appeal. I have perused the lower court's record and judgment and I find that I am in agreement with the submissions of the learned state counsel that the appellant's appeal does not have high chances of success. At this stage, all I wish to state on allegation that appellant was detained at the police station beyond the period provided under S. 72 (3) 9b) of the Constitution is that the appellant was represented by counsel as at the time PW5, arresting officer, gave evidence and no question was put to him about the alleged detention. It cannot be therefore a basis of releasing the appellant on bail pending appeal. There being no other special circumstances, the application dated 3rd May 2010 is hereby dismissed.

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

MARY KASANGO
JUDGE