

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Criminal Appeal 59 & 60 of 2010

SIMON GITAU NJOGU APPELLANT

VERSUS

REPUBLIC RESPONDENT

CRIMINAL APPEAL CASE NO. 60 OF 2010

NJOGU GITAU KAMANDE APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

The 2nd appellant is charged with the offence of occasioning a person with grievous harm contrary to section 234 of the Penal Code and was also charged with malicious damage of property contrary to section 339 (1) of the Penal Code. The first appellant was charged with assault causing bodily harm contrary to section 251 of the Penal Code. They were both convicted as charged and the second appellant was sentenced to two years imprisonment whilst the first appellant was sentenced to pay a fine of Kshs. 20,000/= in default, to serve one year imprisonment. They have both presented before this court their appeals against the said conviction and sentence. By their Notice of Motion dated 23rd March 2010, they seek for bail pending appeal. In respect of the 2nd appellant, he stated in his affidavit in support that he was fined Kshs. 20,000/= but he was unable to raise that amount. He described himself as a 71 year old man with frail health which had physically crippled his right arm causing it to be amputated in 1991. He was apprehensive that due to his ail health, he might not be able to go through the sentence. He stated that due to the backlog in the judiciary system, he feared that his appeal would not be heard soon. In the case of the first appellant, in his affidavit in support of his application stated that his appeal has high chances of success. He too was apprehensive that his appeal, because of the backlog would not be heard soon. He said that whilst attending the lower court matter he had been on bail and had faithfully adhered to the court's bond terms. In the case of **Somo Vs. Republic** [1972] EA. 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. There being no other special circumstances, the application dated 23rd March 2010 is hereby dismissed.

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

MARY KASANGO
JUDGE