

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 88 of 2010

STEPHEN KIPRUTO CHEBOI.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

R U L I N G

The Appellant herein STEPHEN KIPRUTO CHEBOI was convicted and sentenced to serve 3 years imprisonment alongside his brother BENJAMIN KIPLIMO CHEBOI and JOSEPH K. CHEBOI of the offence of causing grievous harm to their stepbrother JOHN CHERUI CHEBOI. Dissatisfied they filed appeal being Eldoret Criminal Appeal No. 62 of 2007 and were released on bail pending appeal by the consent of both their counsel and the state counsel. Thereafter the Appellant's and their counsel appear to have gone to sleep and did not process the appeal prompting the state law office to write to the advocates on 11/04/2008 asking them to proceed to set own the appeal for hearing and it took the state's reminder of 18/07/2008 for the advocates for the Appellants to set down the appeal for hearing on 12/02/2009 on which date it did not proceed. The appeal finally came for hearing on 6th May 2010 when the same was withdrawn as being defective and the Appellants' bonds were extended to 3/6/2010 by which time counsel for Appellant was to have made an application for leave to file appeal out of time. Unfortunately counsel for the Appellant did not attend court on the said 3rd June 2010 because as it turned out the members of the Law Society of Kenya, North Rift Branch had gone on a boycott of the court ceased of the case. The court therefore noted that in the absence of counsel and not knowing whether or not the application for leave to file appeal out of time was filed or not, then the court was left with no option but to commit the Appellants to commence serving their term of imprisonment. Bonds were consequently cancelled.

The Appellants' counsel then moved with speed and obtained leave to file appeal out of time and filed the appeal on 11/06/2010 and on 14/06/2010 filed the application for bail pending appeal now under consideration.

Opposing the same learned Senior State Counsel Mr. Chirchir sated that there had been laxity to proceedings with the appeal and it was the state that prompted the Appellants to move the process. That once the bonds were cancelled the Appellants' counsel proceeded in supersonic speed to file the appeal and to apply for bail pending appeal. It was his view that the Appellants' should remain in custody so that the appeals are progressed speedily by the Appellants and their advocates.

I have given careful consideration to this application. I note that the Appellants' have been out on bond since 27th August 2007 when the late Justice Bauni released them so. They have dutifully attended court when required. I shall strongly hesitate to consider extraneous matters and shall vehemently refuse to visit the errors of counsel, if any, and their speed on the Appellants. I note that the Appellants' bonds were on 6/5/2010 extended to 3/6/2010 and in all probability they were to be extended on 3/6/2010 but for the boycott of the then presiding court. I shall consider that mine shall be the duty to dispense substantive justice. I hereby admit the Appellants to bail pending appeal on the same terms as those they were released on on 27/8/2007. But so that the appeal is processed expeditiously I shall order that the appeal be redied for hearing within 60 days of the date of this ruling. This outcome shall bind the applications in Eldoret HC.CRA. Nos. 89 of 2010 and

90 of 2010. It is so ordered.

DATED SIGNED AND DELIVERED AT ELDORET THIS 16TH DAY OF JUNE 2010.

P.M.MWILU
JUDGE

IN THE PRESENCE OF:-

Mr. Kahili - Advocate for Appellants

Mr. Kabaka H/B for Chirchir - Advocate for State

Andrew Omwenga - Court Clerk.

P.M.MWILU
JUDGE