

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Criminal Appeal 49 of 2010

NICODEMUS MAWIRA KIMAKI APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

The appellant was convicted in the lower court for the offence of obtaining money by false pretence contrary to Section 313 of the Penal Code in the first count. In the second count, he was charged with the offence of stealing in a dwelling house contrary to section 279 (b) of the Penal Code. In the alternative count, he is charged with handling stolen property contrary to Section 322 (2) of the Penal Code. On the third count, the appellant is charged with personating contrary to Section 382 of the Penal Code. The appellant was convicted on his own plea of guilt on the first and the second count. He was sentenced to serve 3 years imprisonment on the first count and 12 months in respect of the second count. Both sentences are to run concurrently. He has now presented before court an application seeking to be released on bail pending appeal. In support of that application, he stated that he is dissatisfied with the conviction and sentence of the lower court and intends to proceed with this appeal. He deponed that his appeal has high chances of success. He finally stated that he suffers from high blood pressure and the conditions in jail are detrimental to his health condition. The conditions upon which the court should consider an application such as this one were well set out in the case of **Dominic Karanja Vs. Republic** [1986] KLR where the court held:-

“The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.

The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.

A solemn assertion by an applicant that they will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.”

I have considered the proceedings of the lower court. As stated before, the appellant pleaded guilty. His counsel in support of his application stated that the proceedings were a nullity because of lack of language. For that reason, counsel said that the plea of guilt was equivocal. The application was opposed by the learned state counsel. In opposing he was of the view that the appellant does not have high chances of success. I have considered those arguments and submissions and I find that the appellant’s application does not meet the threshold of granting bail pending appeal. I do not find high chances of success in this appeal and the fact that the appellant is ailing is not a consideration in such an application. The appellant can obtain adequate treatment whilst in custody. The application dated 17th May 2010 is dismissed.

Dated and delivered at Meru this 26th day of July 2010.

MARY KASANGO
JUDGE