



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Criminal Appeal 31 of 2010

ARTHUR MUYA MURIUKI.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of L. Mbugua Ag. Principal Magistrate in the Senior Resident Magistrate's Criminal Case No.1092 of 2005 dated 12th November 2009 at Karatina)

RULING

The subject matter of this ruling is the motion dated 10th February 2010, in which Arthur Muya Muriuki, the applicant herein, is seeking to be admitted to bail pending appeal. The Motion is taken out pursuant to the provisions of *Section 356* of the Criminal Procedure Code and is supported by the affidavit of the Applicant. There is evidence that the application was served but no response was filed by the Honourable Attorney General. Nevertheless this Court granted Mr. Makura, learned Senior State Counsel, leave to make oral submissions to oppose the same.

Mr. Kingori, learned advocate for the Applicant, urged this Court to grant the order on the basis that the Applicant suffers from diabetes, a disease which cannot be competently managed by the prison authorities. Secondly, it is also argued that the appeal has high chances of success. It is said that the Appellant would argue that the ground the allegation of arson was not proved. Thirdly, that the Applicant will abide by any conditions attached to the bond. Mr. Makura on his part was of the view that the appeal has no chance of success. Secondly, it is said that there are sufficient medical facilities within the prison facility which can manage the Applicant's medical condition.

I have considered the rival submissions made by learned counsels from both sides. The record shows that the Applicant was tried and convicted for the charge of arson contrary to *Section 332 (a)* of the penal Code. He was thereafter sentenced to four (4) years imprisonment. He is aggrieved and has consequently filed this appeal. He is now before this court seeking to be admitted to bail/bond pending appeal. The principles to be considered in an application for bail/bond pending appeal are well settled. It suffices to cite the case of **JIVRAJ SHAH =VS= R [1986] K.L.R. 605** in which the Court of Appeal held *inter alia* as follows:

1. ***“The principal consideration in an application for bail pending appeal is, the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests of justice to grant bail.***

2. ***If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist.***

2.

3. ***The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.***

3.

Let me apply the aforesaid principles to this case. It would appear the key principles which an applicant must show are twofold. First, one must show exceptional or unusual circumstances. The Applicant has stated that he is faced with a special medical need which cannot be provided by the prison authorities. In the case of **DOMINIC KARANJA =VS= R [1986] K.L.R. 612** the Court of Appeal held *inter alia* that ill health perse would also not constitute an exceptional circumstance where there existed medical facilities for prisoners. In the application before me, the Attorney General's Office did not file any affidavit to show that the prison facility where the Applicant is held has the required medical facility to manage the Applicant's condition. There is also no averment to the effect that there exists other alternative avenues given to the Applicant to source for medication outside the prison facility. In the absence of such an explanation, I am inclined to conclude that the medical condition of the Applicant may be regarded as exceptional. The second principle is that the Applicant must show that he has an appeal with overwhelming chances of success. In order to discover whether the Applicant has an appeal with overwhelming chances of success one must look at the proceedings *vis-à-vis* the grounds of appeal. One of the grounds raised on appeal is that the circumstances of the Applicant's identification was not free from error hence the Appellant's identification is in doubt. The second ground raised on appeal is to the effect that the convicting magistrate took over the case from another without complying with the provisions of *Section 200* of the Criminal Procedure Code. I have carefully considered the aforesaid grounds and I am convinced that the appeal has overwhelming chances of success.

In the final analysis, I find the Motion dated 10th February 2010 to be well founded. I hereby admit the Appellant/Applicant to bail pending appeal. Consequently he should be released upon him signing a personal bond of Ksh.200,000/= with one surety of like sum.

Dated and delivered at Nyeri this 9th day of July 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Macharia holding brief Kingori for the Applicant.