

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 136 OF 2010

LESIIT, J

PETER LEPOSO LEKAAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From Original Conviction & Sentence of SRM's Case No.1185 of 2007 Chuka; P. Ngare; Ag SRM)

RULING

The appellant has filed an application under S357 of the CPC seeking to be released on bail pending his appeal. The application is not opposed.

The applicant/appellant was sentenced to serve several prison terms which were to run concurrently. The longest sentence was the one for five years imprisonment. The Appellant relies on two grounds in his application one that this appeal has an overwhelming chance of success. Two that if bond is not granted he is likely to serve the entire sentence before his appeal is heard.

In **CHIMAMBAI V REPUBLIC 1971 EA 343**

1. It was held that;

“Anticipated delay in the hearing of the appeal together with other factors could constitute good grounds for granting bail pending appeal.”

The ground that there will be delay in hearing the appeal is not justified as the appeal has already been set down for hearing on 23rd March 2011.

In regard to the likelihood of the success of the appeal, I have considered submissions by Mr. Gitonga. He stated that the sentence in count 2 was illegal for being more severe than provided in law by double the period provided in regard to count 4, counsel urged that the section under which the applicant was charged had two limbs and that it was not indicated under which one he was charged. Both arguments are correct. However other circumstances must also be considered. The applicant was arrested red handed with an id card of the complainant trying to withdraw money from his account. The applicant's appeal may be arguable but that is no guarantee it may lead to his release. The application is therefore rejected.

Dated at Meru this 9th day of December 2010

LESIT

JUDGE