



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL MISC. NO. 45 OF 2010

ROBERT WANJALA MUNYENYE.....APPLICANT

=VERSUS=

REPUBLIC.....RESPONDENT

RULING

The applicant, Robert Wanjala Munyenye was convicted of stealing a motor vehicle Contrary to Section 278 (a) of the Penal Code and sentenced to serve five (5) years imprisonment in Eldoret Chief Magistrate’s Court Criminal Case Number 7079 of 2009. He now applies for bail pending his appeal. In his supporting affidavit sworn on 5/10/2010, he avers that he has back pain, peptic ulcers and hypertension; that he was to commence a Master’s Degree programme at Moi University this year but cannot do so because of his continued detention and that his appeal has high chances of success.

The application was canvassed before me on 4/11/2010 by the applicant in person and Mr. Oluoch learned counsel for the state. The applicant reiterated the averments in his supporting affidavit and urged me to release him on bail pending the hearing and determination of his appeal.

Mr. Oluoch opposed the application contending that there were no exceptional circumstances to warrant the release of the applicant on bail pending his appeal.

I have considered the application, the supporting affidavit and submissions made to me. Having done so, I take the following view of the matter. Both the applicant and the learned counsel for the state acknowledge that bail pending appeal may only be granted in exceptional cases. There is good reason for the practice because the temptation to abscond is real after conviction. The applicant has based his application on the grounds that he suffers from certain ailments and that prison would compromise his

health and further that he desires to pursue his Master's programme at Moi University. In support of the said medical condition, the applicant has exhibited a copy of a document titled "Discharge Summary" issued by Mariakani Cottage Hospital Limited. The discharge was however on 15/11/2007 and the cause of his admission is given as injuries sustained after an attack by thugs. That document, with all due respect, cannot support the applicant's claim that he suffers from back, peptic ulcers and hypertension.

With respect to alleged admission to a Master's Degree programme at Moi University, no documentary evidence has been exhibited in support of the same.

The applicant has, in the premises, not demonstrated exceptional circumstances. This application is accordingly dismissed.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF DECEMBER 2010.

F. AZANGALALA

JUDGE

Read in the presence of:

Mr. Oluoch and the applicant in person.

F. AZANGALALA

JUDGE

2/12/2010