



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Crim. Appli. 623 of 2006

RASIKLAL HARAKCHANO DOSHI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The applicant by his Chambers Summons filed on 11th December, 2006 sought bond/bail pending the hearing of his appeal. He later filed separate documents in which he contended, *inter alia*, that he stood overwhelming chances of acquittal when his appeal would be heard and determined. He stated that he had been free on bond during the process of trial, but he had not absconded and, moreover, “the surety is still intact up-to-date and the said bond has not been withdrawn”. The applicant stated that he is “old and sickly and the [conditions of] imprisonment are unfavourable” to him.

The applicant had written submissions in which he urged that his appeal stood overwhelming chances of success: the complainant had been a minor, but her evidence was not corroborated; the doctor who had examined the complainant had not been called as a witness; there was no eye-witness to the offence; the defence case was not given adequate consideration by the learned Magistrate; the applicant’s age is upwards of 70years, and prison conditions are injurious to his health.

Learned respondent’s counsel, **Mr. Makura** contested the application, on the basis that the pending appeal was by no means *bona fide* and, besides, had no overwhelming chances of success, and was not linked to any exceptional circumstances such as would justify grant of bond pending appeal. Counsel stated that the appellant had been convicted on the alternative charge of assault on a female contrary to s. 144 of the Penal Code (Cap. 63. Laws of Kenya), and urged that cogent evidence had been adduced to support the charge.

Mr. Makura urged that there was focused evidence on record, showing that the applicant did drag the complainant into a bedroom, undress her, and cause ruptures to her private parts; he urged that the pending appeal appeared hopeless, and carried no element such as would justify the grant of bond pending appeal.

Mr. Makura asked the court to disregard the applicant’s plea of old age, for, “old age by itself is not an exceptional circumstance such as would justify release on bail pending appeal”. The fact that prison conditions were proving inhospitable, counsel urged, was not itself an unusual circumstance to justify grant of bail pending appeal. **Mr. Makura** submitted that the applicant “fails miserably to show that the appeal is *bona fide*; that he has overwhelming chances of success; that he has any unusual circumstances to be considered”.

This court will grant or not grant bond pending the hearing and determination of an appeal on terms which are clearly stated and which speak for themselves. After reviewing relevant authorities on the subject, I thus stated the position in *Anvesh Keshavlal Shah V. Republic*, Nairobi High Ct Misc. Crim. Application No. 675 of 2007.

“The applicant is only required to raise basic issues of merit which would demonstrate that there are high chances the judgment which has been delivered, will be set aside. To persuade this court, some fundamental considerations of law, or principles of assessment of evidence, would have to be urged, as derogating from the verdict of the lower court, so as to hold out high chances of success to the appeal.

“A meritorious depiction of the nature of the “overwhelming-chances-of-success” principle, as the main consideration in granting bail during the pendency of an appeal, is that by *Trevelyan, J* in *Somo v. Republic* [1972] E.A.476. Relying on the safeguards of the trial process to produce a fair verdict, the High Court must take a *Prima facie* position, that the applicant’s service of sentence at the moment, is in accordance with the law, unless some irregular feature of the trial process is shown which could predispose the appeal to likely success. Unless such unusual feature in the judgment is shown, then it remains the duty of this Court to uphold the integrity of the trial process itself, and to see to the due observances of the decisions judicially taken.”

Has the applicant, in the instant matter, succeeded in demonstrating that any element exists in the trial court decision, which disposes the appeal to likely success? I do not think so.

In line with the authorities (such as *Dominic Karanja v. Republic* [1986] KLR 612] I have endeavoured to see if the applicant has raised any *special circumstance* which warrants grant of bail/bond, while his appeal remains pending. I have not found such. Suffice it to say that nothing of legal quality has been raised which would dispose me to grant bail pending appeal; and therefore there is no legal basis for granting it. The application is, therefore, refused.

Orders accordingly.

DATED and DELIVERED at Nairobi this 26th day of January, 2009.

J.B. OJWANG

JUDGE

Coram: Ojwang, J

Court Clerk: Huka

For the Respondent: Mr. Makura

Applicant in person