



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Criminal Appeal 115 of 2008

ALEX KASIANGANI:.....APPLICANT

VERSUS

REPUBLIC:.....RESPONDENT

R U L I N G:

The Applicant has preferred an Appeal against Conviction and Sentence meted out to him in the Chief Magistrates Criminal Case No. 6348/08 at Eldoret in which he was charged with stealing contrary to section 278A of the Penal Code. He was convicted on his own plea of guilty and sentenced to serve two years imprisonment on 22nd December 2008.

The applicant now moves this court by way of a Notice of Motion under section 357 of the Criminal Procedure Code to be released on bond pending Appeal. The said Application is brought under certificate of urgency on the ground that the accused may serve the entire sentence in jail or a substantial part thereof before the Appeal is heard and determined.

The applicant's Petition of Appeal is on the grounds that:-

1. The plea was not unequivocal.
2. The Appellant is semi-illiterate and he is not conversant with Kiswahili nor English language.
3. The Language used by the appellant in responding to the charge and the exact words uttered are not specified.
4. The appellant's constitutional rights were violated by being held in police cells beyond the period allowed by law.
5. The facts of the charge were at variance with the charge the Appellant was facing in the lower court and the same could not be used in support of the conviction.
6. The conviction was unsafe and the sentence is too harsh.

In his oral submissions in court in support of the Application Learned counsel for the Applicant Mr. Momanyi stated that the Applicant has an arguable Appeal and that the charge did not correspond with the facts of the offence and hence the offence of theft was not sustainable. In any event his client did not understand English and Kiswahili him being semi-illiterate and as the Appellant may serve a large proportion of the sentence before the appeal is heard, it is proper that the Appellant be admitted to bail.

Learned Counsel for the Republic Mr. Chirchir did not think that the Appeal stood any chance of success and submitted as much. He added that the Applicant was convicted on his own plea of guilty and urged the court to dismiss the Application.

The guidelines for the court whether or not to admit the Applicant to bail pending appeal are now well settled. There must exist and be shown to exist exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail. And equally importantly is the fact that the appeal has overwhelming chances of success.

The moment the Applicant pleaded guilty and was accordingly convicted, he was no longer presumed innocent. On Appeal it will be his onus to show that the convicting court made an error in so convicting him.

In the various authorities on this subject and in the case of **JIVRAJ SHAH –VS- R (1986) KLR 606** and that of **MUNDIA –VS- R (1986) KLR 623** it has been held that:-

1. There is a presumption that once a person is convicted he was properly so convicted;
2. Once a person has been convicted and sentenced his application for bail pending appeal will be granted only in exceptional circumstances, and
3. It is a discretionary power to be exercised judiciously whether or not to admit an applicant to bail pending appeal.

I do not find that there are exceptional or unusual circumstances in this case to warrant the grant of the orders sought. I do not find that the Appeal has overwhelming chances of success and I exercise my discretion not in favour of the Applicant.

The Application is dismissed. Orders accordingly.

DATED AND DELIVERED IN OPEN COURT THIS 5th DAY OF February, 2009

P.M.MWILU

JUDGE

IN THE PRESENCE OF:-

Mr. Momanyi Advocate for the Applicant

Mr. Omutelema holding brief for Mr. Chirchir Counsel for the State.