

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Suit 138 of 2008

FRANCIS MUGENDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant through the firm of Njeru Ithiga Advocates has moved this court under Section 357 of the Criminal Procedure Code for 2 orders:-

1. That the Appellant/Applicant be granted bail pending appeal.
2. That there be suspension of execution of the sentence of 15 years imprisonment imposed on the Appellant /Applicant by the learned Senior Resident Magistrate at Runyenjes on 20/5/2008.

He relies on 3 grounds on the face of the application and on the supporting affidavit of his advocate dated 7th August 2008. The state opposes the application and maintains that the applicant's appeal has no chances of succeeding, and further that there is no risk that by the time his appeal is heard he will have served a substantial part of the sentence.

On the issue of the appellant having been detained in custody for longer than allowed by the constitution, counsel for the state submitted that that in itself does not lead to an automatic acquittal.

I have carefully considered the application before me, the grounds and contents of the affidavit. I have also considered both counsel's address to court. I have gone through the proceedings before the trial court. My considered view is that the appellant may have an arguable appeal. It is not nonetheless one that can be said to have high chances of success. On the issue of his constitutional rights having been breached, it is not possible to make any finding on that aspect without the original lower court file. He is however at liberty to take it up on the substantive appeal. I am also in agreement with learned counsel for the state that there is no likelihood that the applicant will serve a substantial part of his sentence before the appeal is heard. This court is not over burdened with criminal appeals and the applicant's appeal once filed and admitted will be heard with expedition. The offence he was convicted for is a very serious offence. It is of a personal nature, and the applicant is definitely serving a lawful sentence. I see no exceptional circumstances in this matter that would drive me to allowing this application.

Accordingly, this application must fail. The same is hereby dismissed.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 11th day of June 2009.

In presence of:- Mr. ithiga for applicant and Omwega for state.

Appellant also present.

