

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

Misc Crim Appli 719 of 2007

GEORGE NGEZI AGUGUO.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

Before me is an application by way of Notice of Motion dated 12th October 2007 filed by M/s Ojienda & Company advocates on behalf of the applicant GEORGE NGOZI AGUGUO. The application was brought under certificate of urgency. The application seeks for orders that the applicant be admitted to bail on such conditions as the honourable court may determine pending the seeking and determination of the appeal or in the alternative the sentence (imposed) be suspended pending the hearing. The application has grounds on the face of the Notice of Motion and is also supported by the affidavit of the applicant sworn on 12th October 2007. The grounds of the application are that the applicant filed an appeal which is a prima facie arguable appeal with high chances of success; secondly, that the applicant is ready to comply with any condition upon which bail may be granted; and thirdly, that this court has inherent and original jurisdiction.

At the hearing of the application, learned counsel for the applicant, Mr. Ojienda, made submissions in support of the application. Counsel's main of argument was that the appeal had high chances of success because the language of the court in the proceedings was not indicated. Counsel emphasized that the appellant was not asked what language he understood and therefore the entire proceedings were a nullity. Counsel sought to rely on the case of SWAHIBU SIMBAUNI –VS- REPUBLIC.

Learned State Counsel, Mr. Makura opposed the appeal. Counsel argued that no overwhelming chances of success of the appellant's appeal had been demonstrated. Counsel contented that the language used in the proceedings was English and Swahili and the applicant clearly and unequivocally pleaded guilty.

This is an application for bail pending appeal. As was stated in the case of SOMO –VS- REPUBLIC [1972] EA – the main consideration is whether the appeal has overwhelming chances of success.

I have considered the application, the submissions of both counsel for the parties and have also perused the proceedings. Indeed, according to the record there is no indication that the appellant was asked by the court the language that he understands. However, the record is clear that the language used in court was English translated to Swahili. Both those languages can be used in the subordinate courts. This application having been filed, the burden was on the applicant to demonstrate that his appeal has overwhelming chances of success. The documents filed do not indicate that the applicant does not know both English and Swahili. However, it was for him to say so, which he has not done either in the application or in the affidavit, or even in the submissions of counsel for the applicant.

In my view, the appeal filed is an arguable but the applicant has failed to demonstrate to this court that it has overwhelming chances of success. On that account I will dismiss the application. The applicant was imprisoned for a short period, and therefore I will also order that his appeal be heard on priority.

Consequently and for the above reasons I order as follows ?

1. ***This application for bail pending appeal is dismissed.***
2. ***I order that the appeal of the appellant, once admitted, be heard on priority basis.***

Dated and delivered at Nairobi this 18th day of February 2008.

George Dulu

Judge

In the presence of ?

Applicant

Mr. Ojienda for applicant

Mr. Makura

Mwangi – court clerk