



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA**

Criminal Appeal 48 of 2008

BONFACE LICHINA -----APPELLANTS/APPLICANTS

SIMON SHIAVA

VERSUS

STATE-----RESPONDENT

R U L I N G

At the request of the applicants, and with the concurrence of the respondent, those two applications were consolidated. The said applications are for bail pending appeal, and both applicants were tried and convicted in the same criminal case.

The applicants, BONFACE LICHINA and SIMON SHIAVA, were convicted for the offence of causing grievous harm contrary to section 234 of the Penal Code. Each of them was then sentenced to five (5) years imprisonment.

It was the submission of the applicants that their respective appeals have high chances of success. They said that the only reason for their conviction was that they were at the scene of crime. In other words, they believe that the evidence tendered against them was purely circumstantial, and even then, the said evidence is thought to have been wholly insufficient to sustain a conviction for either of the applicants.

If the court should grant bail to the applicants, they say that they are both ready to abide by any conditions which the court may set.

In answer to the application, the learned Senior State Counsel, Mr. Daniel Karuri, submitted that the appeal by the two applicants herein do not have overwhelming chances of success. On his part, the learned state counsel said that the evidence adduced by the prosecution was not limited to circumstantial evidence. There was, in his assessment, some direct evidence, which helped to prove that the applicants' committed the offences for which they were convicted.

This court was asked to take note of the fact that the offences were committed during the day time, and also that the applicants were persons who were known to the complainants.

But the applicants insist that this was a case of "mob justice" in which positive identification was not possible.

The term "mob justice" as I understand it, is used to describe a disorganized crowd of people, who

attack a suspect. The crowd would normally attack spontaneously and fast. And as the number of people constituting the crowd is large, it becomes difficult for the suspect to identify the individuals who make up the crowd.

A perusal of the evidence adduced before the trial court reveals that the complainant was summoned by an assistant chief. The summons were relayed to the complainant by a village elder.

After receiving the summons the complainant went to the home of the assistant chief. At the said home, the complainant found seven people, who were all known to him.

Two of those people alleged that the complainant had stolen their herd of cattle. Even though the complainant denied the allegations, the assistant chief tied him up with a rope. The applicants herein, together with the assistant chief and the other four (named) persons then assaulted the complainant.

At some point in time, after falling down, the complainant managed to escape. However, the group of persons who had been assaulting him pursued him.

Eventually, the complainant was rescued by the chief of Malimili location.

Although he was at first arrested by the police, the complainant was later taken to hospital, where he was admitted for four days.

The foregoing constitutes a summary of the evidence tendered by the complainant (PW1).

PW2 largely corroborated the complainant's evidence. In particular, PW2 testified that the applicants herein were amongst the people who assaulted the complainant.

To the extent that the applicants have argued that the evidence adduced by the prosecution was only circumstantial, I find that that is not borne out from the record. I say so because, as I have already indicated hereinabove, both PW1 and PW2 did give direct evidence against the applicants. And both those witnesses had known the applicants from before the incident which gave rise to the criminal charges which were preferred against the applicants.

As the strength of the applicants' appeal was said to be pegged to the assertion that the complainant was a victim of "mob justice" and as the records show that that is not correct, I have come to the conclusion that the applicants have failed to demonstrate that their appeal has overwhelming chances of success.

In the event, I find no merit in the application. It is dismissed.

Dated, signed and delivered at Kakamega, this 30th day of April, 2009

FRED A. OCHIENG

J U D G E