



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

Misc Crim Appli 870 of 2007

JEREMIAH GITARI NJAGI..... APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The applicant came before the Court by way of Chamber Summons of 5th December, 2007 seeking bail/bond pending the hearing of his appeal. An in-mate of Kamiti Main Prison, the applicant depones that he had been convicted and sent to jail for a term of 20 years, and he has a pending appeal against the decision of the trial Court. The applicant states his belief that his appeal has overwhelming chances of success; and on that basis he prays for bail pending the hearing and determination of his appeal.

Learned counsel **Mr. Ondieki**, who argued this application on behalf of the appellant, submitted that the applicant's appeal raised substantial points of law, and had overwhelming chances of success. Counsel chose to address just three of the fourteen legal issues which the applicant is raising on appeal.

Firstly it was urged that the applicant had not been safely identified as a suspect – and so there was no basis for the conviction. This point, counsel submitted, gave grounds for a successful appeal.

Secondly it was contended that the medical evidence tendered in Court did not disclose any link between the applicant and the incident forming the basis of the charge.

Thirdly, it was contended that the circumstantial evidence relied upon by the trial Court was not consistent exclusively with guilt on the part of the applicant herein.

Counsel submitted that the hearing and determination of the appeal could take much time, and in the meantime, the applicant would have served a substantial part of the prison term. Counsel stated that the applicant had not once failed to appear in Court during trial, when he had been at liberty on bond. He urged that it was in the interests of justice that the applicant be allowed bail pending appeal.

Learned counsel **Mr. Makura** submitted that the application had been brought *bona fide*, and, in his view, the standard of identification of the appellant at the time of commission of the offence charged, was questionable.

I have considered the submissions of counsel in this matter, and I will on that basis allow bond for the applicant, on the following terms:

(1) The appellant shall pay a cash bail of Kshs.20,000/=.

(2) In the alternative, I allow an own bond worth Kshs.70,000/= secured by a valid title to land or motor vehicle.

(3) This matter shall be mentioned before the Deputy Registrar on 5th May, 2008.

DATED and **DELIVERED** at Nairobi this 30th day of April, 2008.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Huka

For the Applicant: Mr. Ondieki

For the Respondent: Mr. Makura