

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 93 of 2008 & 94 of 2008

TARASILA WAMBUI GICHOVI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

AND

CRIMINAL APPEAL NO. 94 OF 2008

PATRICK GICHOVI NYAGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(CONSOLIDATED)

RULING

This ruling is in respect of Criminal Appeal No.94 of 2008 and No. 93 of 2008. The appellants in both files were tried and convicted in the same file i.e ***Embu CM. CC.No.691 of 2005***. They were each fined Ksh.60,000/= with a default sentence of 2 years imprisonment and a further 3 months imprisonment for the offence of creating a disturbance in a manner likely to cause a breach of the peace. They are serving that sentence. They have nonetheless filed appeals which have yet to be admitted. Two main grounds were advanced in support of the application:-

1. That the appellants' appeal has chances of success; and
2. That there are exceptional circumstances in this matter because the appellants are man and wife.

There is the ground on the face of the application also that the appellants will have served a substantial part of the sentence before the appeal is heard and determined. I have considered the submissions by counsel for the state and counsel for the appellants. I have also been informed by the authorities furnished to me by consent. As far as the first ground is concerned, I wish to state that I have gone through the record of the trial court and considered the same carefully. I cannot say that the appellants' appeal has overwhelming chances of success. All I can say is that they have an arguable appeal.

On the ground of exceptional grounds, I must say that the fact that the two are husband and wife per se does not amount to exceptional circumstances. It is first an unfortunate state of affairs. The learned trial Magistrate did consider that fact in their mitigation and that could be the reason why they were given an option of a fine. My deduction is that they do not want to pay the fine because the Magistrate ordered that if the fine is paid, then Ksh.30,000/= should be given to the complainant as compensation.

My view is that if indeed the appellants feel that one of them should be out of prison in order to look after their children, then they should raise the fine for one of them. I find no convincing reason whatsoever to warrant me to release the appellants on bail pending appeal. Their application therefore fails. The same is hereby dismissed.

Delivered, signed and dated at Embu this 22nd day of July...2008.

W. KARANJA

JUDGE