



REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL NO. 54OF2008

JOHN NJUGUNA KINYANYUI APPELLANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

This is an application by the Appellant under the provisions of Section 357 (1) Criminal Procedure Code and he seeks to be released on bond pending the hearing and determination of the appeal.

The Appellant together with another had been charged with the offence of manslaughter contrary to Section 202 of the Penal Code as read with Section 205 of the Penal Code. It was alleged that on 22nd November, 2006 at Langas Estate in Uasin Gishu District within Rift Valley Province, unlawfully killed Edwin Sakwa.

The grounds of appeal are that:-

1. The Learned trial Magistrate erred in law and in fact in failing to hold that the prosecution witnesses evidence were saddled with contradiction.
2. The Learned trial Magistrate erred in law and in fact in failing to hold that PW1 was not a credible witness.
3. The Learned trial Magistrate erred in law and in fact in failing to hold that the purported blood stains in exhibit 1 and 2, the alleged assault weapons, should have been tested/analysed to ascertain whether indeed it was human blood and whose blood it was.
4. The Learned trial Magistrate erred in law and in fact in failing to hold that no eye witness saw the 2nd accused, the appellant herein assault the deceased.
5. The Learned trial Magistrate erred in law and in fact in failing to hold that there was doubt as to where the deceased met his death.
6. The Learned trial Magistrate erred in law and in fact in failing to fully evaluate 2nd accused/appellant's evidence and give reasons as to why he rejected the same.
7. The Learned trial Magistrate erred in law and in fact in failing to hold that the 2nd appellant herein was unlawfully held in police custody for a period of about 47 days which period was well beyond a

maximum of 14 days provided for under the Constitution of Kenya.

The Appellant argued that during the trial he had been on bond with a surety. That he abided by the terms of the bond and he always attended Court. That his surety is ready and willing to continue standing surety for him. He said that he is an employee of Eldoret Municipal Council and has children who depend on him as the sole bread-winner.

The application was opposed by the Respondent on the ground that there were no overwhelming chances that the appeal would succeed.

I have considered the application, and the submissions by Counsel. I wish to be guided by the principles to be applied when considering bail pending appeal as pronounced by Tanui J. in the case of **MUNDIA – V- REPUBLIC (1986) KLR 623**. These are:-

1. Admission to bail pending appeal is a discretionary power which the Court must exercise judiciously in accordance with laid down principles.
2. Once a person has been convicted and sentenced, his application pending appeal will be granted only in exceptional circumstances.
3. There is a presumption that once a person is convicted he was properly convicted.
4. The chances of the appeal succeeding is a factor for consideration in arriving at a decision in an application for bail pending appeal.

I have considered that the accused was convicted substantially on the basis of the evidence of a single witness. The witness heard screams coming from the 1st accused's house. She rushed there to find out what was happening. She entered the room and found the 2nd accused, the appellant armed with an iron bar. The deceased was lying on the floor screaming. The appellant threatened the witness with the iron bar. She went back to her own place.

The next day, the body was found at another place. The police found a blood stained knife and blood stained iron bar in the 1st accused's house. The witness testified that the 1st accused was in the house when she saw the deceased on the floor. From the record the 1st accused and 2nd accused are sister and brother. The deceased and 1st accused had a relationship. The deceased had told the witness that he was going to see his wife, the 1st accused to resolve their differences.

Counsel for the appellant submitted that there was no corroboration of PW 1's evidence. That PW 1 did not witness the attack. The Respondent relied on PW 1's evidence and circumstantial evidence.

The appellant states that the body was found far from the place where PW 1 claims she last saw the deceased. The Respondent claims that the body had been moved.

The Appellant claims that he was held 47 days in police custody in violation of the provisions of the Constitution.

From the foregoing, I think that there are several arguable points of fact and law. However, it cannot be said that the appeal has overwhelming chances of success. The appeal can go either way and I do not see the probability of success at this stage.

There are also no exceptional circumstances to justify the release of the appellant on bail. The fact that he is employed and is likely to lose his employment or that he is the sole bread-winner for his family do not amount to exceptional circumstances.

I therefore do hereby reject the application for bail pending appeal. It is hereby dismissed.

DATED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF SEPTEMBER, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Omutelema for the State

Mr. Nyekwei for the Appellant