



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 79 of 2008

DANIEL MWANGI KAIHUTO

APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Appellant had been charged with the offence of obtaining by false pretences contrary to Section 313 of the Penal Code. It was alleged that on the 25th September, 2008 at Kilimani Assistant Chief's office in Kibulgeny Location in Uasin Gishu District, within the Rift Valley Province with intent to defraud obtained from the Government of Kenya the sum of Kshs. 25,000/= by falsely pretending that he had not been paid by the said Government of Kenya a sum of Kshs. 25,000/= through the District Officer Turbo Division Mr. Gerald Mutuku thereby obtaining another Kshs. 25,000/= meant for the Government of Kenya support for the burnt or destroyed houses.

The appellant on his own plea of guilty was convicted and sentenced to 18 months imprisonment on 2nd October, 2008. He subsequently lodged an Appeal setting out the following grounds:-

1. That the learned Magistrate erred in law and in fact when he convicted the accused without sufficient evidence being adduced to warrant conviction.
2. That the learned Magistrate erred in law and in fact by failing to adequately consider the charge in question.
3. The learned Magistrate erred in law and in fact in sentencing the accused to serve 18 months imprisonment without an option of a fine or other sentence which is excessive in the circumstances.
4. That the learned Magistrate erred in law and in fact in failing to consider the mitigation of the accused person hence arriving at a sentence which is excessive in the circumstances.
5. That the learned Magistrate erred in law and in fact by failing to note that during the presentation of facts no exhibits was produced in Court to prove he had produced different photographs or that he had received the said money on an earlier date and specifically to warrant a conviction in this first case.

The Appellant has now brought this application under the provisions of Section 357 (1) Criminal Procedure Code and seeks to be released on bond pending the hearing and determination of the appeal.

He says that his appeal has high chances of success. That he has a wife and four (4) children below the age of 10 years of which the last born is two (2) months old and they all depend on him. He says that his family continues to suffer in the IDP camp as they have no one to look and protect them and the conditions in the camp are harsh making his family helpless.

I have considered the application, affidavit and submissions by Counsels.

The accused pleaded guilty when the charge was read to him. It was read to him in Kiswahili a language he understood. The facts are simple and clear. He accepted them to be true once they were read to him. It would therefore appear that the plea was unequivocal.

At this stage I am not convinced that the appeal has good chances of success. The problems facing his family cannot in law be a consideration in arriving at a decision in an application for bail pending appeal. The appeal can go either way but I see no probability of success at this stage.

There are no exceptional circumstances to justify the release of the appellant on bail.

The application is disallowed and is hereby dismissed.

DATED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF NOVEMBER, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Chirchir for the State

Mr. Wanjala for the Applicant