



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Crim Appli 617 of 2006

EDWARD ALIAU KIVUYO.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The Applicant EDWARD ALIAU KIVUYO through Counsel Mr. Mugu seeks bail pending the hearing of his appeal HCCA No. 705 of 2006. There are two grounds cited in support of the application.

1. The evidence of identification of the watch which led to the conviction was insufficient.
2. There was no evidence Applicant came into possession of the watch with the knowledge it had been stolen or unlawfully obtained.

Mr. Mugu submitted that the Applicant was convicted for **HANDLING A STOLEN WATCH** worth Kshs.250/- eight (8) days after the alleged robbery. Counsel submitted that no evidence was adduced to support a finding that at the time the Applicant came into possession of the watch, he knew or ought to have known that the watch was stolen. Counsel submitted further that the watch was a common type which could easily be bought in the streets and that the Applicant’s explanation that he bought it was good. Counsel urged court to find that in the circumstance the Applicant’s pending appeal had high chances of success.

Mrs. Gakobo, learned State Counsel, opposed the application. It was learned counsel’s contention that the Applicant failed to demonstrate that the appeal had high chance of success. Counsel submitted that the watch in question was identified by its owner, PW3 and the watch repairer PW5, as belonging to the Complainant. Counsel submitted that the evidence of identification was sufficient to justify a conviction.

I have considered the submissions by both Counsels together with the pleadings. I also took time to peruse the record of the proceedings of the lower court. Since the appeal in the matter is pending, I will not comment much on the evidence. Suffice it to state that after perusing the record I am satisfied that the Applicant’s appeal is likely to succeed. Since the likelihood of success in an appeal is a factor that should be taken into consideration in an application for granting of bail pending appeal and having satisfied myself that the appeal is likely to succeed, I see no reason not to allow the prayers sought in this application. Consequently, I will grant the Applicant bail as sought in the following terms: -

1. Applicant to deposit Kshs.20,000/- cash bail for his release on bail pending appeal.

2. Alternatively Applicant to sign a bond of Kshs.50,000/- with one surety of like sum who should be a Kenyan.

3. The Deputy Registrar to examine the surety, if second option is chosen, to ascertain his/her suitability to stand surety for the Applicant.

4. The Applicant to attend mentions before the Deputy Registrar on 60 days intervals until the pending appeal is heard and determined or until further orders of the court.

Dated at Nairobi this 23rd January 2007.

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LESIIT, J.

JUDGE

Ruling read and delivered in presence of:

Applicant present

Mr. Mugu for the Applicant

Mrs. Gakobo for State

Tabitha CC

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LESIIT, J.

JUDGE