

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 149 of 2005

PETER MAINA MUTHONDEKI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

RULING

The Appellant, during the trial at the lower court, was faced with two counts. The first count was a charge that he was in preparation to commit a felony contrary to *Section 308(1)* of the Penal Code. The Second count related to the charge of being in possession of an imitation firearm contrary to *Section 34(1)* of Cap. 144. After the trial the Appellant was found guilty of both counts and sentenced in respect of count one to three years imprisonment and count two to seven years imprisonment. Both sentences were to run concurrently. The Appellant has brought before court by way of Notice of Motion dated 29th January 2007. By that application the Appellant seeks that this court would admit him to bail pending appeal. The court has perused the papers filed by the Appellant and has taken into regard the grounds of appeal filed therein.

In making the present application the Appellant submitted that he has overwhelming chance in succeeding in his appeal. He has also stated that he would be willing to abide by whatever conditions that this honourable court would be pleased to impose upon him. The State did not oppose the Appellant's application on the basis that the evidence tendered during the trial fell short of preparation to commit a felony. The State also was of the view that there were two police officers who arrested the Appellant but only one officer was called to give evidence.

I have considered the Appellant's application. The court, in deciding in respect of the application will be guided by the case of Raghbir Singh Lamba -V- R (1958) E.A. In that case the court held as follows:

(i) the principle to be applied is that bail pending appeal should only be granted for exceptional and unusual reasons: R. V Leinster (Duke), 17 Cr. App. R. 147 and R. v A. B. (1926), 1 T.L.R. ® 118 applied.

(ii) neither the complexity of the case nor the good character of the applicant, nor the alleged hardship to his dependants justified the grant of bail, but had the court been satisfied that there was an overwhelming probability that the appeal would succeed, the application would have been granted."

I have examined the evidence tendered during the trial and I have also perused the judgment delivered by the trial court. I have come to the conclusion that the appeal does not present overwhelming probability of success. This is in particular to count number two. I therefore find that the Appellant has failed to satisfy one of the requirements of granting bail pending appeal. It also ought to be noted that *Section 34(1)* of Cap. 114 provides that the sentence on being convicted is of not less than seven years and not more than 15 years. For that reason I am also of the view that the Appellant has not shown special circumstances which would move this court to grant him bail pending appeal. The Appellant's Notice of Motion dated 29th January 2007 is rejected and dismissed.

Dated and delivered this 16th March 2007.

MARY KASANGO

JUDGE