

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

Criminal Appeal 33 of 2007

CELESTINO MURIITHI APPLICANT

VERSUS

REPUBLIC RESPONDENT

**(An appeal from the judgment of Hon. G. Oyugi, SRM dated 14th February, 2007 in
Tigania Senior Resident Magistrate Criminal Case No.2050 of 2006.)**

RULING

The applicant herein was tried, convicted and sentenced to 20 years imprisonment by the court below (Mr. Oyugi, SRM).

The applicant being aggrieved by both the conviction and sentence has preferred this appeal. Meanwhile he has also brought the instant application in which he is seeking that he be admitted to bail and there be a stay of further execution of the judgment and sentence pending appeal.

That application is grounded on the facts that the appeal has high chances of success; that the offence is bailable, and that the applicant is sickly.

The application is opposed by counsel for the respondent who has argued that there is overwhelming evidence against the applicant and that there are no special circumstances to warrant the court to grant the application.

The foregoing arguments have duly been considered. Section 357(1) of the Criminal Procedure Code, under which this application is expressed to be brought empowers the High Court to order that a person who has been convicted or sentenced be released on bail, or if that person is not so released, that the execution of the sentence or order appealed against be suspended pending appeal. It is now established that the court in considering application for bail pending appeal must not go into the merits of the intended appeal.

However, the likelihood of success of the appeal is a factor to be taken into consideration in dealing with such application.

An application for bail pending appeal can also be granted if there are exceptional or unusual circumstances.

See (Ademba V R)(1983) KLR 442. I have looked at the proceedings and the judgment of the trial as well as the petition of appeal and find no exceptional circumstances disclosed by the applicant to enable me to grant the prayers sought. There is no medical evidence of the nature of ailment he is suffering from.

Secondly from the evidence adduced in the subordinate court, I see no likelihood of success in the appeal. For these reasons, this application must fail.

The same is dismissed.

DATED AND DELIVERED AT MERU THIS 11th DAY OF May, 2007

W. OUKO

JUDGE