



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Criminal Appeal 40 of 2007

(Being an appeal from criminal case No. 195 of 2007 before Mr. Godfrey Oyugi, Senior Resident Magistrate Court at Tigania dated 22.2.2007)

TIMOTHY MWENDAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

This is an application under Sections 256, and 357 of the Criminal Procedure Code for bail pending appeal. The applicant was sentenced to serve 5 years after he pleaded guilty to a charge of assault causing grievous harm before SRM Court, Tigania (G. Oyugi, Esq). Being aggrieved, he has preferred the appeal herein.

This application is brought on the basis that the appeal has high chances of success; that the applicant was a minor at the time of his conviction; and that he is suffering.

Learned counsel for the respondent opposed the application arguing that the appeal does not have high chances of success. That where a plea of guilty is entered and it is unequivocal, there cannot be an appeal, except as to the legality and extent of the sentence. That the fact that the applicant was a minor cannot be raised at this stage but ought to have been raised at the trial. I have considered these arguments.

The principles governing bail pending appeal are now settled. After one is convicted by a court of competent jurisdiction one has to show that the appeal challenging that conviction has high chances of success.

See Somo V R (1972) EA 476. See also Daniel Dominic Karanja V R(1986) KLR 612 in which it was stated that

“The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant considerations would be whether there are exceptional or unusual circumstances.”

Other secondary considerations include the applicant’s health, the nature of the offence, the sentence and the likelihood of delay in finalizing the appeal.

See Nathan Browne Birundu V R, HCCR, Application No.896 of 2001(unreported). Has the applicant

satisfied these conditions?

First and foremost no exceptional or unusual circumstances have been shown. His age cannot be an exceptional factor. It is said that the appeal has overwhelming chances of success on the ground that the plea was not properly taken as the applicant did not appear to understand the language used.

Secondly that the prosecution applied to amend the charge sheet yet the facts of the amended charge sheet were materially different from those earlier narrated in court.

Regarding the first ground, the record is quite clear that the charge was read to the applicant in Kimeru and he answered in Kimeru language. Again facts were outlined in Kimeru language.

Turning to the second ground, it is true from the record that two sets of facts were read over to the applicant.

The first one was on 21st February, 2007 and the second one on 22nd February, 2007. I find that they are more or less the same, save for the reason giving rise to the argument between the applicant and the complainant., namely that the applicant had said that the complainants parents were chang'aa brewers. It would have been useful had the applicant annexed to his application the two charge sheets.

For the foregoing reasons, this application is dismissed.

DATED AND DELIVERED AT MERU THIS 15TH DAY OF JUNE,2007

W. OUKO

JUDGE