



REPUBLIC OF KENYA

HIGH COURT AT EMBU

Criminal Appeal 29 of 2007

STEPHEN MBOGO CAIRU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

In this application the applicant was convicted and sentenced to imprisonment on the charge of Handling Stolen property contrary to section 322(2) Penal Code he is now praying to be admitted to bail. The application is supported by affidavit of Advocate Ngigi. The grounds shown are that:-

1. that the sentence imposed is 8 years imprisonment.
2. that the appellant has arguable appeal already filed
3. that if the order is not granted the sentence may be served before appeal and that the applicant resides within the jurisdiction of court and is not likely to abscond.

In the lower court he was on bail but he never breached the terms of bail.

It is to be noted that at the moment the Applicant is serving a jail term imposed after trial. Also the sentence of 8 years is so long that the appellant may be tempted to escape the long stay in prison. Furthermore it is not shown that the appeal has high chances of success. The complaint that the Appellant was charged with Burglary and theft is not a ground of appeal since the applicant was actually convicted on clearly stated alternative charge of Handling. In the appeal before granting bail, the court has to be satisfied that the appeal have overwhelming chances of success and the bail is granted to avoid the appellant being denied his liberty if he will succeed in appeal.

In the present case I am not satisfied that there are overwhelming grounds of appeal. It is also to be said that this appeal is not likely to be undetermined by the time 8 years are over.

I therefore do not allow the application. The same is dismissed. The appellant is denied bail.

Dated this 3rd July, 2007.

J. N. KHAMINWA

JUDGE

3/7/2007

Khaminwa – Judge

Njue – Clerk

Mr. Kimathi for state

Mr. Maina HB for Magee

J. N. KHAMINWA

JUDGE