

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 132 of 2007

NORMAN NJOROGE GITHU.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

RULING

The Appellant herein was convicted of assault causing actual bodily harm on the 17th May 2007. The Appellant was sentenced to two years imprisonment. By an application dated 28th May 2007, the Appellant seeks that he be admitted to bail pending the hearing and determination of his appeal. The application is brought under *Section 356(1)* and *Section 357(1)* of the Criminal Procedure Code. It was argued on behalf of the Appellant that his appeal has the overwhelming chances of success and in this respect counsel for Appellant argued that the trial court failed to indicate the language that the Appellant understood. In so doing counsel argued that the court violated the Appellant's constitutional rights as per *Section 77(2)* of the Constitution. The Appellant relied on the following case: **Criminal Appeal No. 243 of 2005 between SWAHIBU SIMBAUNI SIMIYU & ANOTHER -V- REPUBLIC.**

The Court in that case held as follows:

“It is abundantly clear from these provisions set out from the Constitution and the Criminal Procedure Code that in a criminal trial the language of the trial must be understood by the accused person.”

The Appellant's counsel further stated that even at taking the plea it is not clear whether the Appellant understood the substance of the charge. This he stated was contrary to *Section 198 (1)* of the Criminal Procedure Code. The application was opposed by the State. The State was of the view that the appeal does not have high chances of success. Further that the prosecution had proved their case beyond reasonable doubt. The principles which guide the court in the consideration of an application for bail pending appeal were well set out in the case of **KAGUMA -V- REPUBLIC.** This case held as follows:

“For the Applicant to obtain bail pending appeal, he had to demonstrate overwhelming chances of success. Minor relevant considerations would be whether there were exceptional or unusual circumstances. Previous good character of the Applicant, hardship facing the wife and children, mere ill health, or even a solemn assertion that the Applicant would not abscond, were not exceptional circumstances.

I confirm that I have perused the proceedings and I have considered the submissions made by counsels. I find that the Appellant's application is not merited and I therefore hereby dismiss the same.

Dated and delivered at Nyeri this 28th day of September, 2007.

MARY KASANGO

JUDGE