



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc. Crim. Appli. 446 of 2007

TONNY DHIMAN..... APPELLANT

-AND-

REPUBLIC.....RESPONDENT

REASONS FOR EARLIER RULING, DATED 11TH JULY, 2007

The applicant's Chamber Summons of 26th June, 2007 was brought before me on 11th July, 2007. After I had read the supporting affidavit and heard the submissions of counsel, I concluded that the application for bail pending appeal was one of merit. I therefore made orders admitting the applicant to bail pending appeal in the sum of Kshs.10,000/= with surety for an equal amount.

The grounds for the application were as follows:

- (a) the applicant was tried, convicted and sentenced to a three-year term of imprisonment; and it was apparent that by the time the appeal was heard and determined, he would have served the full term specified in the sentence;
- (b) the offence for which the applicant had been charged, tried, convicted and sentenced, was a bailable offence;
- (c) the applicant's appeal had a high chance of success and, if he completed serving the term of imprisonment, then the appeal would have been rendered nugatory.

The applicant was represented by learned counsel **Mr. Begi** and **Mr. Orengo**, while the State was represented by learned counsel **Mr. Makura**.

Mr. Begi submitted that there were serious defects in the trial Court proceedings, and the same would render the earlier Judgement a nullity. At no stage (including plea-taking) was it indicated what *language* the Court was using; judgement was delivered *without the benefit of the original record*; judgement was given *without prior notice*. On account of Miscellaneous Application No. 139/07 the Court file had been called up for use in the High Court; and during that time the learned Magistrate proceeded to deliver judgement, after giving no notice of a forthcoming judgement.

Such circumstances suggested, learned counsel submitted, that the trial Court was acting improperly, a likelihood strengthened by the trial Court's language in the said judgement, that the accused was a "ruthless person who has professionalised the offence." Such language, **Mr. Begi** submitted, tended to be so personal, it took leave of the objective, matter-of-fact character that should typify the findings and rulings of a Court of justice.

Learned counsel also noted that he had not been ready on the spot to make final submissions, and had asked for an adjournment to enable him to study the proceedings before making submissions; although the State had no objections, the trial Court decided to take submissions right-away; and it was now urged that the applicant had not been accorded a *fair trial*.

Mr. Begi noted that the applicant who had now been in custody for one month and a half, had been tried while he enjoyed bail terms, but had not absconded. The applicant, even on this occasion, was prepared to comply with any bail terms such as this Court may impose.

As learned counsel **Mr. Makura** too was in agreement that the applicant's appeal had high chances of success, the serious flaws in the trial Court proceedings and judgement unquestionably beckoned for the ruling which I gave on 11th July, 2007.

I therefore admitted the applicant to *bail pending appeal*, on terms which I specified on that occasion.

The orders of 11th July, 2007 remain in place.

DATED and **DELIVERED** at Nairobi this 18th day of September, 2007.

J. B. OJWANG

JUDGE

Coram: Ojwang, J

Court Clerk: Odero

For the Applicant: Mr. Begi; Mr. Orege

For the Respondent: Mr. Makura