

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Appeal 72A of 2007

(An application for bail pending appeal)

ALFRED EFUMBI APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Appellant, **ALFRED EFUMBI**, was on 20th July, 2007 convicted of setting fire to crop of cultivated produce contrary to section 334 (a) of the Penal Code and sentenced by the Chief Magistrate's court in Kakamega in Criminal Case No. 406 of 2007 to a term of 5 years imprisonment. The particulars of the offence were:-

“ALFRED EFUMBI: On the 20th day of February, 2007 at Siyenga village, Nambacha Sub-location of Kakamega District within Western Province, willfully and unlawfully set fire to crop of cultivated produce, namely sugarcanes valued at Kshs.347,130/= the property of AMINA WAWIRE.”

Aggrieved by the conviction and sentence, the Appellant filed appeal on 3rd August 2007. In his 7 grounds of appeal the appellant challenged the conviction and sentence contending, inter alia, that the proceedings were a nullity as the appellant's right under section 72 (2) (b) of the Constitution had been violated by reason of his being held in custody from 20-2-2007 to 28-2-2007 when he was arraigned in court. Mr. Ombaye, learned counsel for the appellant urged the court to admit the appellant to bail because the appeal, he said, had overwhelming chances of success. Moreover, he said, the hearing of the appeal might take a very long time and the appellant might serve his sentence before it is heard. This was patently an exaggeration because appeals in this court do not take beyond 12 months on the outside to be heard and determined.

On her part, Mrs. Ann Kithaka, learned Senior Principal State Counsel left the matter to court.

I have perused the application and given due consideration to the submissions by counsel. Section 357 of the Criminal Procedure Code, Cap 75, confers on this court unlimited discretionary power to admit an applicant to bail where such applicant has lodged an appeal. The factors that the court will take into account in considering whether to grant bail pending appeal include:

(i) whether the appeal has overwhelming chances of success or, in other words, whether the appeal has substantial merit. This is easily demonstrable where the decision appealed from was plainly wrong in law, or is not supportable in law.

(ii) whether there are exceptional or unusual circumstances upon which the court can conclude that it is in the interest of justice to grant bail. This was the decision of the court of Appeal in JUVRAJ SHAR v. R. (1986) KLR 605.

(iii) whether the appellant might serve the sentence before the appeal is determined.

The rationale in granting bail pending appeal is predicated on the rationale that there is no reason or rhyme in holding an appellant in prison during the pendency of the appeal only to quash or set aside the decision appealed from later.

In the instant case, the appellant has alleged contravention of his constitutional right which, if proved, may result in the conviction being quashed. For this reason, I am persuaded that the dictates of justice demand that bail pending appeal be granted. Accordingly, I allow the application and order that the appellant be and is hereby admitted to bail on the terms that he shall sign a bond of Shs.300,000/= and a surety of like amount. It is so ordered.

Delivered at Kakamega this 15th day of November, 2007.

G. B. M. KARIUKI

J U D G E