

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Criminal Appeal 30 of 2007

CLEOPHAS BARUA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant has moved this court under section 357 (1) C.P.C. for orders that he be committed to bail pending hearing and determination of the appeal and secondly for a stay of execution of the sentence. The application is premised on the 6 grounds on the face of it and on the supporting affidavit of his counsel. The state counsel has opposed the application arguing that the same is defective for not indicating the case number from which it emanates; that the supporting affidavit which has been sworn by the advocate and not the applicant should also be struck out, and also that there are no exceptional circumstances existing which would compel the court to release the appellant on bail pending appeal.

I have considered the application before me along with these submissions by both counsel. Firstly, I must agree with learned counsel for the state that the application before me is incurably defective. It does not indicate the case number of the file it emanates from. This is so even in the affidavit in support of the same. Even assuming that the applicant would be granted bail on which case? He has not even indicated when he was convicted and the nature of sentence he is serving. It is the duty of the counsel or party filing such an application to bring out all the relevant particulars in his application in order to enable the court to make an informed decision on the same. It is not the duty of the court to go looking for the said particulars.

Be that as it may, I feel that instead of striking out the application, I should make a decision on its merits so as to dispose of the same once and for all. Consequently, I have considered the arguments by both counsel herein. I have also gone through the grounds of appeal annexed to the affidavit on the face of it, there is no illegality apparent on the face of the proceedings or conviction. I do not see what the counsel for the applicant calls “*overwhelming*” chances of the appeal succeeding. The only issue I should consider therefore is whether there are exceptional or unusual circumstances existing in this case which would compel me to grant bail pending appeal. (*see LAMBA -V- R [1958] E.A 337*). In this case, there are no exceptional circumstances established. It is noted that the only contention is that the applicant is ailing and that he requires medical attention elsewhere. I note that there is no averment by the applicant himself to tell the court that he is ailing and what ails from. Indeed, if the applicant was serious about this application he should have annexed hospital or Doctor’s notes to show that he is ailing and further that whatever ailments, it can only be contained outside prison. Indeed I agree with counsel for the state that the applicant’s counsel had no capacity to swear that the applicant is ailing as that is a matter of fact which he cannot depone to. Further, the application does not even state whether or not the appeal has been admitted. To my knowledge, there is no serious backlog of Criminal Appeals and once the appeal is admitted, the same will be heard and disposed off without undue delay. Consequently, I do not find any compelling reasons to make me release the applicant on bail pending appeal as requested. The application before me lacks merit. The same is hereby dismissed.

W. KARANJA

JUDGE DELIVERED today in presence of Mr. Atancha for the applicant and Mr. Ndege for

the state.

W. KARANJA

JUDGE

7/11/2007