

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Criminal Appeal 32 & 33 of 2006

1. ANTONY WAFULA

2. HABIBU WALELA
APPLICANTS

V E R S U S

REPUBLIC
ENT

R U L I N G

The Applicants, Antony Wafula and Habibu Walela, were charged jointly in Kakamega Chief Magistrate Criminal Case No.1907 of 2001 with the offence of trespass with intent to annoy contrary to section 5(1) of the Trespass Act, Chapter 294 of the Laws of Kenya. They pleaded not guilty and a full fledged trial ensued at the end of which both were on 14-3-06 found guilty, convicted and sentenced to pay a fine of Shs.2000/= each and in default a term of six months imprisonment. On 24.3.06 they each filed appeal against conviction and sentence.

In their identical applications by Chamber Summons supported by identical affidavits, the applicants sought bail pending appeal. They submit in their affidavits that their appeals have high chances of succeeding and that they may complete their sentences before the appeals are heard.

Mrs. Kithaka, Senior Principal State Counsel did not oppose the applications but she assigned no reasons for doing so.

I have perused the proceedings and the Petition of Appeal as well as the judgment of J. M. Anunda, DMII Professional. The court has unlimited discretionary power under section 357 of the Criminal Procedure Code, Cap 75 of the Laws of Kenya, to admit an applicant to bail where such applicant has lodged an appeal and has demonstrated that the appeal has overwhelming chances of success. The grant of bail pending appeal in such cases is predicated on the premise that it would be unnecessary to keep an applicant in jail if his conviction will eventually be quashed and sentence set aside. That has been demonstrated here. For this reason, I admit the applicants to bail pending appeal on the terms that they shall sign personal bonds of Shs.20000/= each. They are cautioned that they must attend court for the hearing of their appeals.

Dated, signed and delivered at Kakamega this 4th day of April, 2006.

G. B. M. KARIUKI

JUDGE