

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Appeal 30 & 31 of 2006

(Applications for bail pending appeal from the Judgement of (P. K. SULTANI (Ms), SR.M.)

delivered in Mumias S.R.M. Criminal Case No. 991 of 2005.)

AUGUSTINE A. MURINGO

PHILLIP MAYABI KARAKACHA.....

APPELLANT

VERSUS

REPUBLICRESPOND

ENT

RULING

The two Applicants/Appellants were jointly charged with robbery with violence contrary to section 296(2) of the Penal Code in Mumias SRM.CR.C. No.991 of 2005. After a full fledged hearing they were both found guilty and convicted of the lesser offence of causing greivous harm contrary to section 234 of the Penal Code and each sentenced to pay a fine of Shs.25,000/= and in default four months imprisonment. Aggrieved by the conviction and sentence, they each lodged appeal.

In their identical applications for bail pending appeal, which were consolidated, the applicants submitted that their appeals have a high chance of success but are likely to take long to be heard and determined. In their identical affidavits in support of the applications, both Applicants alleged that they were sickly but did not allude to the nature of their ailment nor did they give any reason why they have not requested treatment while in prison.

The appeals are yet to be admitted to hearing. However, I have perused the proceedings and judgement furnished in application No. 30 of 2006. I have also perused the Petitions which are also identical.

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 providing that it is demonstrated that the appeal has overwhelming chances of success or that the decision appealed from was plainly wrong in law. Where it is shown that the decision is not supportable in law the court will undoubtedly admit the applicant to bail. The rationale in doing this is that where an applicant will in all probability be successful in his appeal, the ends of justice demand that there would be no reason or rhythm in holding him in prison during the pendency of the appeal only to quash or set aside the decision appealed from latter.

I am not satisfied that the appeals by the Applicants have overwhelming chances of success. The anticipated delay in the hearing of the appeals is speculative and a myth. The dairy of the court on criminal appeals for the year 2006 is not full. Once admitted, the appeals will be heard in the course of this year. As regards the allegation that the applicants are sickly, no evidence was furnished to back up the allegation. The applications are dismissed.

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

G. B. M. KARIUKI

J U D G E