



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Criminal Appeal 221 of 2005

JULIUS GITONGA KIRIMA APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The Appellant who is the Applicant was the accused in PM's Criminal Case No. 2483/2005 where he had been charged with the offences of being in possession of 300 grams of bhang and 10 litres of changaa. When he was asked to plead to the two counts he stated in respect of both;

“It is true”.

When the facts were read to him he stated;

“The facts are correct.”

, As to his criminal record, the prosecutor in the trial court stated that the Appellant had been convicted in the same court (Criminal Case No. 1423/2005) four (4) months prior, for the offence of being in possession of Chang'aa. He had been fined Ksh.1000/= and in default to serve 30 days in jail.

2. For the two counts, subject of this Appeal, and on his own plea of guilty, he was sentenced to serve 18 months in prison and on the 2nd count he was sentenced to serve 6 months in prison.

3. He filed his Appeal on 21.10.2005 and an application for bail pending Appeal on 19.12.2005. It is that Application that is now under consideration.

4. In the Application and in his supporting Affidavit sworn on 19.12.2005 it is his case that he is sickly and that his Appeal has high chances of success and that unless he is released on bail pending Appeal, he may serve the whole or substantial part of his sentence, and in the event that the Appeal succeeds he will **“suffer irreparable loss.”**

5. The advocate for the Applicant in his submissions raises one other point; that the plea taken was not unequivocal because the bhang and the chang'aa he was allegedly found in possession of, were not produced as exhibits. That no report from an expert accompanied the exhibits to show that they were truly chang'aa and truly bhang.

6. The learned State Counsel for his part opposes the application for reasons that there cannot be an Appeal on conviction where the Appellant had pleaded guilty in the trial court. That for that reason no

exhibit needs to be produced in such a situation.

7. As for the sentence, it was submitted that it was proper in the case of an accused person who had a previous record and regarding the same offence.

8. S.348 of the Criminal Procedure Code states as follows:

“No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the legality of the sentence”

9. I have seen the petition of Appeal and I see nothing amounting to **“legality of”** or the illegality of the sentence imposed. The Appellant pleaded guilty and accepted the facts as read out to him. A plea that is unequivocal is one in which the accused person in a language he understands has the charge read out to him and the particulars thereof and he pleads to those matters with full understanding thereof. The record of the lower court shows that the Appellant accepted both the charge and the facts in support. He said nothing about his prior conviction but sought leniency upon which he was sentenced.

10. I see nothing in the record or the submissions by the advocate for the Applicant to show that his Appeal which ought to be on sentence only has any chance, let alone overwhelming chances of success. It was his duty to meet that one obligation before discretion can be exercised in his favour. He has failed to do so. All the matters raised in his Affidavit and in submissions on his behalf are irrelevant and of no use to the Applicant or the court.

11. The application is unmerited and is hereby dismissed

12. Orders Accordingly.

Dated, signed and delivered in open court at Meru this 4th day of May 2006

ISAAC LENAOLA

JUDGE

In the Presence of:

Mr. Kimathi Advocate for the Appellant

Mr. Muteti State Counsel for the State

ISAAC LENAOLA

JUDGE