

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Crim Appli 98 of 2006

SIMON NDEGWA GITHAE APPLICANT

VERSUS

RESPONDENT RESPONDENT

R U L I N G

Simon Ndegwa Githae, the applicant herein was tried and convicted by the Senior Resident Magistrate Nyeri for the offence of preparation to commit a felony contrary to section 308(2) of the Penal Code and being in possession of imitation firearm contrary section 34(1)(5) of the Firearms Act Cap 114 Laws of Kenya. He was sentenced to serve concurrent terms of 10 years imprisonment in respect of the first count and 7 years imprisonment in respect of the second count.

Being dissatisfied the applicant has lodged an appeal against his conviction and sentence. The applicant now seeks to be admitted to bail pending appeal contending that his appeal has high chances of success and that the appeal is likely to take long before it is heard. It is the applicant's contention that his conviction was wrongly founded on the uncorroborated evidence of a single witness. The applicant also maintains that the trial magistrate was wrong in ignoring the probation officer's report which was favourable to him.

Learned State Counsel has objected to the application contending that the applicant has not demonstrated that the appeal has high chances of success and that the trial magistrate had the discretion to disregard the probation officer's report.

I have considered the proceedings and judgment as well as the grounds of appeal. Without saying more, I am satisfied that this appeal has overwhelming chances of success and in the circumstances it is fair and just that the applicant be admitted to bail pending appeal. The applicant may be released on a Bond of Kshs.50,000/= plus one surety of like sum to be approved by the Deputy Registrar of the High Court.

Dated signed and delivered this 24th day of July 2006.

H. M. OKWENGU

JUDGE