



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**Criminal Case 42 of 2006**

**JOSEPH MWITHALIE**

**MICAH.....APPELLANT/APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. The Applicant prays that this court should release him on bail pending appeal. It is argued on his behalf that his appeal has overwhelming chances of success as the evidence tendered before the trial court was weak and could not sustain the charge of occasioning bodily harm contrary to s.234 of the Penal Code which was reduced on conviction to one of assault contrary to s. 251 of the Penal Code.
2. I agree with the learned State Counsel that exceptional circumstances must be shown to warrant release on bail pending appeal. This would include a set of circumstances which disclose substantial merit in the appeal which would result in the appeal being allowed (see Somo vs R [1972] E.A. 476 as approved by the court of Appeal in Daniel Karanja vs R Nai 14/1986). In the instant case, it is argued that the trial court was inundated with contradictory evidence which led to the reduction of the charge to simple assault and that had the mitigation given been considered, then the Appellant would have been given a lesser sentence.
3. I note that it is argued further that the Appellant is sickly and may not serve his sentence but I will dispose of that argument by stating that the treatment card exhibited shows that on 25.4.2006, the Appellant was suffering from headaches and general malaise and for me that cannot be such an illness to warrant the finding that he is safer in health outside prison.
4. Turning to the more serious argument that the Appellant has an appeal with merit, prima facie, I do not share that argument. The Appellant and his mother invited P.W.1 Dickson Lincha to come and survey their land and when the officer (he is a surveyor) went to the land, the Appellant and his brother turned on him and attacked them with sharp objects. P.W.3 Joseph Baithae confirmed this evidence and I do not see that the defence tendered by the Appellant can change the fact that he took the law into his hands and assaulted innocent government employees. He acted in a manner that would give no credence to his argument that he has a meritorious appeal.
5. I have no choice but to dismiss the Application for bail pending appeal.
6. Orders accordingly.

**Dated, signed and delivered in open court at Meru this 25th Day of October 2006**

ISAAC LENAOLA

J U D G E

In the Presence of:

**Mr. Omayo            Advocate for the Appellant**

**Mr. Muteti            State Counsel for the State**

ISAAC LENAOLA

J U D G E