



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

**Criminal Case 100 of 2006**

**STEPHEN NKURI M'MWOITHIA.....APPELLANT/APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. The Applicant seeks bail pending appeal and argues that this appeal has overwhelming chances of success as the case he was facing in the trial court was riddled with contradictions and that the charge was engineered by the complainant because of an existing land dispute. That the Applicant is a man of frail health and risks serving the whole sentence before the Appeal is heard in view of the busy court diary.
2. It is important to state from the outset that the Applicant was charged with the offence of assault causing actual bodily harm contrary to s. 251 of the Penal Code and at the conclusion he was sentenced to serve two(2) years of imprisonment. It is said that he tried to take maize stalk that P.W.1 was cutting in her shamba and when asked why he was doing so, he attacked her and cut her right leg with a panga. The trial court saw the injuries which were apparently serious. P.W. 2 and P.W.3 confirmed the attack and the contradictions on whether it was a hand or leg that was cut are at the moment issues that cannot change the fact that the Applicant so far as I can see and without reason, attacked P.W.1 and occasioned bodily harm. P.W.4 the Clinical Officer confirmed the injuries and the defence offered by the Applicant was incredible. Even if there is a land dispute between persons, it cannot amount to a license to inflict injury on ones rivals. In the circumstances, it cannot be said that the Appeal has overwhelming chances of success.
3. As to the argument that the Applicant is a man of ill health, I see no evidence that injuries he allegedly got treated for on 6.2.2006 have not healed and that the situation is life threatening and therefore the claim is pedestrian.
4. In any event, I see no reasons for granting bail pending appeal and the application is hereby dismissed.
5. Orders accordingly.

Dated signed and delivered in open court at Meru this 24th day of October 2006

ISAAC LENAOLA

JUDGE

In the presence of

N/A Advocate for the Appellant

Mr. Muteti State Counsel for the State

ISAAC LENAOLA

JUDGE.