

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Crim Appli 193 of 2006

DAVID CHEGE SAMUEL APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant, **DAVID CHEGE SAMUEL** seeks to be admitted to bail or bond pending the hearing of his criminal appeal number 89 of 2006 that he has filed. The two grounds advanced in support of the application are that one, the applicant's appeal has overwhelming chances of success and two, that he is ailing from Diabetes as well as Tuberculosis. It is the applicant's contention that he was arrested as he visited his relative and without prior knowledge that the motor vehicle found in the compound had been stolen. It was his further contention that he was denied the right to call Mrs. Chege, the tenant of the house and in whose name the receipts for rent were issued. On his sickness, the applicant pointed out that he suffers from Diabetes and Tuberculosis. For Diabetes he requires injectable insulin which is expensive and also requires good storing conditions which are not available in prison.

Miss Gateru, learned state counsel opposed the application. Counsel submitted that the applicant's sickness perse is not a good ground for granting bail. That there are medical facilities within the prison that can cater for the applicant's medical condition. In the event that the prison facilities prove inadequate then the applicant could be referred to Kenyatta National Hospital.

As to whether the applicant's appeal has overwhelming chances of success, the learned state counsel submitted that the appeal had no such chances. That there was strong evidence on record to support the conviction. On sentence, counsel submitted that the applicant was sentenced to 8 years imprisonment only early this year. Consequently he will not have served a substantial portion of the sentence by the time the appeal comes up for hearing.

What the court has to bear in mind while entertaining applications of these nature was clearly set out in the celebrated case of **KARANJA VS REPUBLIC (1986) KLR 612**. The applicant must demonstrate that the appeal as filed has overwhelming chances of success and that there are unusual and exceptional circumstances as pertains to the appeal. Sickness as correctly argued by the learned state counsel is not a ground for granting bail pending appeal particularly where as in the instant case, it is known that there exists medical facilities in our prisons that can attend to the applicant's medical condition. Nor is a declaration that upon being granted bail, the applicant will not abscond or jump bail, be sufficient to tilt the scale in favour of granting the application. I will therefore discount the applicant's medical condition in determining the application.

I have glanced through the record of the proceedings. No doubt the appeal appears arguable. However I would hold that it has not reached the threshold of where one can confidently say that its chances of succeeding are overwhelming. The applicant was found in a house in whose compound a motor vehicle which the previous day had been violently hijacked from PW1. Whether the house belonged to the applicant or other persons, or whether the applicant had exclusive possession of the house or compound are all matters which will be canvassed on appeal. Further issues as to whether the applicant was a visitor, or had prior knowledge that the motor vehicle had been stolen are all matters which cannot be resolved either way on an application of this nature. I also do not discern anything exceptional or unusual as would force my hand into granting the application.

The applicant was sentenced on 6th March, 2006. This is hardly a year ago. The sentence imposed is

8 years imprisonment. In the circumstances the issue of sentence cannot be material at this stage since the appeal will definitely be heard in the next two or three sessions of the High Court. Accordingly the issue of the applicant having served a substantial portion of the jail term by the time the appeal comes up for hearing cannot arise.

Having carefully considered the application, I find that it must fail for the reasons advanced hereinabove. Accordingly the application is dismissed.

Dated at Nairobi this 2nd day of October, 2006

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MAKHANDIA

JUDGE