

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Crim Appli 565 of 2006

PETER GICHUHI KANGETHEAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Applicant ***PETER GICHUHI KANG'ETHE***, through Messrs Namada & Co. Advocates seeks to be admitted to bail pending the hearing and determination of his Appeal number 614 of 2006. The main ground advanced in support of the Application is that the Appeal as filed has overwhelming chances of success.

Mr. Makura, Learned State Counsel who appeared for the Respondent conceded to the Application. In conceding to the Application, Mr. Makura submitted that there was insufficient evidence to sustain the conviction on a charge of preparation to commit a felony. Counsel submitted that the evidence of PW1, PW2 and PW3 did not support the charge. That the Applicant was arrested on mere suspicion. On being searched however, the Applicant was found in possession of the items set out in the charge sheet. It was Counsel's view that the mere possession of the items aforesaid did not necessarily mean that the Applicant was preparing to commit a felony. Counsel finally submitted that the Applicant's defence was not taken seriously by the Learned Magistrate. She merely glossed over it. On that basis the Learned Counsel agreed with Counsel for the Applicant that the Appeal had overwhelming chances of success.

In brief reply, Mr. Namada, Learned Counsel for the Applicant submitted that the Learned Magistrate committed several errors in the proceedings leading to a faulty conviction. That if the Application is not allowed the Appeal could be rendered nugatory as the Applicant could have served the entire prison term by the time the Appeal comes up for hearing.

This being an Application for bail pending Appeal, I have no intention of pre-empting the possible outcome of the Appeal or tie the hands of the Judge who may eventually hear the Appeal by making findings on the issues raised by Counsels in their submissions. Suffice to state that having glanced through the record of the proceedings, the Judgment of the Learned Magistrate and the Petition of Appeal, I am inclined to agree with both Counsels that the Applicant has demonstrated that his Appeal has overwhelming chances of success.

I have considered that the Applicant was sentenced on 28th March, 2006 to a term of 3 years imprisonment. In the circumstances the issue of sentence becomes material at this stage. It may well be that by the time the appeal comes up for hearing, the Applicant could have served the entire period or if not, a substantial portion thereof thereby rendering the Appeal nugatory.

I have also considered the case of ***DOMINIC KARANJA VS REPUBLIC (1986) KLR 612*** which laid down the principles that guide Courts in Applications of these nature. I think and without saying more the Applicant has succeeded in showing that there are overwhelming chances of the Appeal succeeding and consequently there is no need or justification for depriving him of his liberty at this stage. The issue of sentence is a minor but relevant consideration in the circumstances of this case as the Applicant is most likely to have served the term of imprisonment or a substantial portion of it before the Appeal is heard and determined.

In those circumstances, I am inclined to grant bail pending Appeal. Accordingly and to secure his liberty, the Applicant shall execute a personal bond of Kshs.50,000/= plus one surety of similar amount. On his release, the Applicant shall be attending before the Deputy Registrar, for the mention of his Appeal every after sixty (60) days until the Appeal is heard ad determined. The first of such mention shall be on 29th January, 2007.

Dated at Nairobi this 29th day of November, 2006.

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MAKHANDIA

JUDGE

Ruling read, signed and delivered in the presence of:-

Applicant

Mr. Makura for State

Mr. Namada for Applicant

Court clerk - Eric

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MAKHANDIA

JUDGE