



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Appeal 79 of 2006

VIOLET MUHENJE:.....1ST APPELLANT

LENAH MUHONJA:.....2ND APPELLANT

VERSUS

REPUBLIC:.....RESPONDENT

RULING

The two Appellants herein were convicted and sentenced by the Resident Magistrate at Eldoret on 4th October, 2006 in Eldoret Chief Magistrate case No. 8216 of 2003. They had been charged with two others with the offence of maliciously administering poison to harm contrary to section 206 of the Penal Code.

They faced 4 counts each and they were sentenced as follows:-

Count 1 - Imprisonment for 5 years each

Count 2 - Imprisonment for 7 years each

Count 3 - Imprisonment for 5 years each

Count 4 - Imprisonment for 7 years each

The Appellants filed this appeal against conviction and sentence on 17th October, 2006. They now seek to be released on bail pending the hearing and determination of the Appeal herein under the provisions of Section 357 of the Criminal Procedure Code.

During the submissions by counsel at the hearing of the application for bail pending appeal, Ms. Oundo for the state raised a point of law that there was no proper appeal before the court as the Appellants filed a joint Petition of Appeal. She argued that there is no provision under the Criminal Procedure Code for the filing or lodging of joint appeals. The court was referred to a case decided by the Court of Appeal for Eastern Africa in 1931. This is the case of **REX –V- SANJA TAIGA AND KODHETA NDIAGA (1931) 13, KLR 79**. The Chief Justice then, Sir Jacob Barth said:-

“The appeal of each convict should be filed separately. There is no authority for a joint appeal by convicts sentences in the same trial and it is obvious that in many cases such a procedure would not be in the interests of the appellant.”

I was unable to get any other precedent on this point. I have carefully perused all the relevant provisions of the Criminal Procedure Code relating to appeals. There is no legal provision which sanctions the filing of a joint memorandum or petition of appeal.

A careful study of the provisions in the Criminal Procedure Code will show that at all material times, the provisions contemplate “**an appeal**” and “**an appellant**” In my view conviction and sentence is personal to the convict. His grounds of appeal, facts of case touching on him, mitigation, personal circumstances etc cannot be similar to any other convict. It would not be convenient and practical to have joint appeals. Consolidation of appeals may be necessary for the convenience of the parties, court and to save judicial time. However it is quite a different thing to have so-called “**Joint appeals**”.

This is not provided for in the law and a party cannot on his own start such practice. It cannot have been the intention of Parliament to allow joint appeals and then remain silent about it.

In the premises, I do hereby uphold the preliminary objection. The joint petition of appeal filed herein is defective and not permissible by law. I see no legal basis to accept it. In any case, it is an inconvenient and burdensome way to present appeals.

In the premises, the application for bail is not sustainable as there is no proper appeal before me. In order to perfect the record, I do hereby exercise this court’s inherent jurisdiction and strike out the petition of Appeal dated 17th October,2006.

DATED AND DELIVERED AT ELDORET THIS 7TH DAY OF DECEMBER,2006.

M.K. IBRAHIM

JUDGE