

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPLICATION NO. 702 OF 2004

(In the matter of an intended appeal)

Between

JOHN MBURU MUIRURIAPPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

The accused is charged with 5 counts of obtaining money by false pretences contrary to Section 313 of the Penal Code. He appeared before the Learned Chief Magistrate on 31st May 2004 and pleaded not guilty to all the counts.

The hearing date was fixed for 5th August 2004 and the applicant was released on bond of Shs.400,000/= with 2 sureties. But on 28th June 2004 his bond was cancelled by the Chief Magistrate hence this application to have his bond reinstated.

In principle, because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail. But there are well defined grounds on which it is proper to oppose or refuse bail. The overriding is the likelihood of the accused person attending his trial. If there is any reasonable doubt about this, or the sureties ordered cannot be regarded as sufficiently reliable, bail should be refused. Secondly the likelihood of interference with the witnesses, actual or threatened. The third ground is the seriousness of the offence charged. The fourth ground is that bail may quite reasonably be refused or opposed if there are grounds for belief that the offender will repeat the offence. And lastly the character and antecedents of the accused.

The applicant's bond was cancelled because he has three convictions. One he was placed on probation which he has completed and two he is out on bail pending appeal. In addition he again has 3 cases in which he is awaiting trial.

In the present case the applicant is charged with 5 counts all of similar nature relating to fraud.

All this coupled with those grounds put forward by the learned state counsel when the bond was cancelled compel me to find that the applicant's bail ought not be reinstated. In the result the application is refused.

Dated and delivered at Nairobi this 8th day of February 2005.

J.L.A. OSIEMO

JUDGE