

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
MISC. CRIMINAL APPLICATION NO. 59 OF 2005

MOSES IRUNGU MUTIA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

The Applicant has by Chamber Summons dated 28th January 2005 sought bond pending the hearing of his Appeal. Alternatively he seeks to have his appeal heard. The Application was opposed.

It was the Applicant's contention that on 18th November 2002 when the offences he had been charged with are alleged to have been committed, he was detained at Naivasha Police Station. That he had been arrested on the 17th November 2002. Consequently, the Applicant argued, he could not have committed the alleged offences and therefore, the evidence of PW1, which found the basis of the conviction, was worthless. He challenged the evidence of identification adduced against him as mere dock identification. Further that the evidence of PW4, upon which he was convicted for the handling charges was discredited in cross-examination.

MISS OKUMU, learned Counsel for the State while opposing the Application submitted that there were no exceptional circumstances to warrant the Applicant being granted bail pending appeal. She also submitted that there were no overwhelming chances of success of the Appeal. She submitted that the evidence adduced was both that of identification and of recent possession.

I have perused the record of the proceedings of the lower court. **NYARANGYI, PLATT** and **GACHUHI JJA**, in the case of **DOMINIC KARANJA vs. REPUBLIC 198 KLR 612** at page 613 held;

“The most important issue here is that if the appeal has such overwhelming chances of success that there is no justification to deny the Applicant of his liberty and the minor relevant consideration would be whether there were exceptional or unusual circumstances.”

The evidence adduced before the trial court was both direct evidence of identification and evidence of recent possession of stolen property. Having so found, I am not persuaded by the Applicant's submission that the Appeal had overwhelming chance of success. Indeed none has been demonstrated by the Applicant. The fact that there may be inconsistency as to dates would not by itself, necessarily invalidate or discredit the entire evidence adduced by the prosecution. It is the duty of the Appellate Court to re-evaluate the entire evidence and resolve all issues arising from the appeal, including that of inconsistencies in the evidence. In the circumstances I find no merit in the Application for bail pending appeal and dismiss it accordingly. On the second limb of the Application, I am aware that there are no dates available during this term, for fixing of new appeals, but some are likely to be available in the next term. There being no unusual, special or exceptional circumstances to warrant this Court to give the Applicant's appeal a hearing date on merit, I dismiss that prayer as well. I do so, not because of unavailability of dates in the current term, but because the Applicant failed to make out a case for an early date.

The upshot is that this Application is dismissed for lack of merit.

Dated at Nairobi this 29th day of April 2005.

LESIT, J.

JUDGE

Read, signed and delivered in the presence of;

LESIT, J.

JUDGE