



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**Misc Crim Appli 149 of 2005 - Copy**

**PETER THAGICHU NDUNGU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The Applicant **PETER THAGICHU NDUNGU**, through his counsel, **MR. MEENYE**, seeks to be admitted to bail or bond pending the hearing of his Appeal **H.C. Cr. Application No. 64 of 2005**. The main ground argued by the counsel is that the Appeal has high chances of success. It was his contention that the identification of the Applicant by the Complainant and PW3 was questionable. He submitted that since the Complainant was attacked from behind, he could not have identified his attackers.

**MR. MAKURA**, learned counsel for the State opposed the Application. He submitted that the Applicant had not shown that the Appeal had high chances of success. He further contended that the Applicant was recognized by PW3 and that that recognition was proper.

This being an Application for bail, I have no intention of pre-empting the appeal. I have glanced through the record of the proceedings. No doubt, the appeal is arguable. However, I would not declare that it has overwhelming chances of succeeding. There are legal issues for determination on Appeal but they cannot be resolved either way in an Application such as this one.

Learned counsel **MR. MEENYE** also argued that the Applicant will be arguing an Appeal that the sentence of 8 years meted against him was excessive since he was a first offender. **MR. MAKURA** on the other hand submitted that the sentence was not excessive since the maximum sentence was 14 years imprisonment for same offence.

I have considered that the Applicant was sentenced only on 27th October 2004. Its only half a year ago. The sentence imposed is 8 years. In the circumstances the issue of sentence cannot be material at this stage since the Appeal will definitely be heard in the next one or two sessions of the High Court which is not long from now. At the Appeal, the issue of longevity of the sentence can be canvassed and determined. As for now, it is not a matter that would warrant this court to grant bail as sought.

I have considered the authorities cited by learned counsel for the State. The case of **KARANJA vs. REPUBLIC 1986 KLR 612** is in all fours with this Application. The Applicant has not succeeded in showing that there are overwhelming chances of the Appeal succeeding and that consequently there was no justification for depriving the Applicant of his liberty. The issue of sentence would have been a minor but relevant consideration if the Applicant would have served a substantial part of it before the Appeal is heard. As I have already indicated, that is not the case here. The Applicant is unlikely to serve any substantial part of the sentence before his appeal is heard.

Having considered this Application, I find it fails for reasons given hereinabove. The same is dismissed.

Dated at Nairobi this 27th day of Nairobi 2005.

**LESIIT**

**JUDGE**