

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Appeal 88 of 2005

PAUL KAMAU MWAURAAPPELLANT
VERSUS
REPUBLICRESPONDENT

RULING ON BAIL APPLICATION

The appellant has applied for bail under Section 356 and 257 of the Criminal Procedure Code Cap 75.

The Appellant seeks orders to be admitted to bail pending appeal and that in the meantime, Stay of Execution be granted pending appeal.

The application is supported by Affidavit of his advocate on the grounds that the appeal has high chances of success and Appellant is ready to attend court whenever required and that the health of appellant is deteriorating in Manyani due to congestion in the prison. That the offences convicted on are bailable and there is likelihood of delay in determining this appeal.

The charge sheet shows charges under Section 357 (a) Penal code, Section 349 Penal Code, Section 353 Penal code Sec. 357 (a) Penal code Sec. 350 (1) Penal code forging Sec. 389 Penal Code. All the counts are eight.

It is to be noted that the appellant is serving a sentence imposed by a court of law.

Whereas he has a right of appeal, I have examined the grounds of appeal and find no overwhelming chances.

In case of illness there are arrangements for the treatment of prisoners in every prison. In any case no evidence of the alleged illness is exhibited.

Any irregularity in trial proceedings can be addressed only in the appeal and is not an overwhelming ground to grant bail. No authorities were referred but it is trite law that to warrant bail pending appeal, there must be special circumstances raised by the applicant and there must be overwhelming chances of success.

The accused is convicted on 8 counts. We cannot say there is serious illness without seeing medical opinion. For these reasons I decline to grant bail. The application is dismissed. The application for Stay of Execution is rejected. The fines can always be refunded in case of success in appeal.

Delivered and dated at Mombasa this 26th day of September 2005

J. KHAMINWA

J U D G E