

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION 7 OF 2005

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH NGUGI MUNGAI.....ACCUSED

RULING

This is an application brought under the provisions of sections 356 and 357 of the Criminal Procedure Code seeking for orders:-

“1.....

2. that the court be pleased to grant leave to the accused to appeal out of time and extend the time of lodging Notice of Appeal, and the Notice of Appeal filed herein be deemed to have been duly filed.

3. that the court be pleased to order that all proceedings in Criminal Case No. 642 of 2004 Voi, now pending before the Hon. Resident Magistrate’s Court at Wundanyi be stayed pending the hearing and final determination of this application and or further orders of the court.”

Paragraph 4 seeks an order of stay of the proceedings in the lower court case pending the hearing and final determination of the accused’s appeal to the Court of Appeal.

The application is based on the grounds *inter alia* that the Applicant’s appeal to the Court of Appeal has reasonable chances of success as this court acted ultra vires in setting aside the Applicant’s acquittal in a revision; that if a stay is not granted the intended appeal will be rendered nugatory and that the applicant has just learned that he has a right of appeal against the said order the same having not been explained to him by this court.

In the course of her arguments Miss Muriithi for the Applicant abandoned the prayer for extension of time to appeal out of time on the ground that this court has no jurisdiction to enlarge time in such matter. She however, submitted that it has jurisdiction to stay the proceedings in the lower court.

In reply Mr. Monda, learned state counsel argued that this court did not error in reversing the order of acquittal in its revisionary jurisdiction as section 361(7) deems a revision to be an appeal and empowers the court to make any order it would have made in an appeal.

Sections 356 and 357 which have been invoked in bringing this application deal with bail pending appeal after conviction and sentence and empower the court to order a stay of the execution of the sentence until the appeal is heard. There is no conviction or sentence in this matter and the sections are therefore not applicable. Beside that this is not an application for bail or stay of sentence. This is an application for stay of the lower court proceedings.

While on a reflection I entertain the view that the Applicant’s complaint is not without merit, apart from the fact that I do not have jurisdiction to make the order sought there is no appeal pending before the

Court of Appeal. Consequently I dismiss this application.

DATED and delivered this 17th day of October 2005.

D. K. MARAGA

JUDGE