



**REPUBLIC OF KENYA**

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

**Criminal Appeal 88 of 2005 (1)**

**CHRISTOPHER MULEI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

This application is brought under Section 356 of the Criminal Procedure Code. The applicant prays that the court do admit him to bail pending hearing and determination of Criminal Appeal 88/05; that the bail terms be fair.

The grounds upon which the application is premised are that the appellant's appeal filed in court on 26/8/05 has overwhelming chances of success; that if bail is not granted the appeal will be rendered nugatory as the applicant was sentenced to 2 years imprisonment and the appeal is unlikely to be heard during that time or he will have served a substantial period of the sentence by the time appeal is heard. The application is also supported by the affidavit of Bernard Muteti Mung'ata, counsel for the applicant who depones that the appellant was arraigned before court on 23/8/05 on charges of assault causing actual bodily harm and escape from lawful custody Contrary to Sections 251 and 123 of the Penal Code respectively. The appellant was not represented. He was convicted on same day and sentenced to two years imprisonment after he pleaded guilty. He is dissatisfied with the conviction and sentence and lodged an appeal. He urges that the appeal has high chances of success because the plea was not unequivocal; that the facts given by the prosecutor did not support the offence; that the sentence is harsh and excessive and that the plea and facts were not properly presented to the court.

The Respondents did not file any papers in reply. Mr O'Mirera, the learned State Counsel, did not oppose the application on grounds that the plea was not unequivocal; that there was no plea of guilty entered nor was there a conviction recorded. Further, the facts were wrongly merged.

A cursory look at the record clearly shows that the plea was not properly taken. A plea of guilty was not entered upon the accused taking the plea nor was there a conviction entered after the facts were read to the accused person. The facts on record are mixed up and do not really disclose charges of assault and escape from lawful custody. The appeal has indeed high chances of success.

The above being the case, it would be unfair to keep the appellant in prison for long since this appeal may take long to be heard considering the pending back log. It is only fair that the appellant be granted bail pending appeal as the appeal may ultimately be rendered nugatory.

Accordingly, the appellant is hereby released on bond of Kshs.50,000/= with one surety of like sum. The surety to be approved by the Deputy Registrar. Mention on 18/10/05.

**R.V. WENDOH**

**JUDGE**

**Dated at Machakos this 6th day of October 2005**