

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS CRIMINAL APPLICATION

NO. 671 OF 2003

PETER OFUSU AYEH APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

The applicant herein has applied to this court for bail pending his appeal against conviction and sentence for various offences under the Immigration Act (Cap.172) and the Aliens Restriction Act (Cap.173).

The original lower court record shows that he pleaded to each charge as follows:

“I admit the charge.” After narration of requisite facts by the prosecutor, the applicant is recorded as having said:

“Facts are true.”

Thereafter the applicant was convicted on his own plea of guilty to each count. There were 12 counts, some under the Immigration Act and others under the Aliens Restriction Act.

The applicant’s counsel, Miss Kinoti contends that the applicant’s appeal stands overwhelming chances of success against conviction as well as against sentence while the respondent’s counsel, Mr. Ogetii contends that the applicant’s appeal has no overwhelming chances of success.

In the course of submissions in support of the contention that the applicant’s appeal has overwhelming chances of success, one recurrent theme emphasized by learned applicant’s counsel and which calls for early comment, was that the prosecutor alluded to counterfoil re-entry permits or passes and that there is no reference to counterfoil re-entry permits or passes in the charge sheet but only to forged endorsements of Kenyan re-entry passes. In this regard, it is important to refer to the original lower court record. It shows that the prosecutor in fact alluded to counterfeit and not counterfoil Kenyan re-entry passes. It is noted that the term “counterfeit” has the same meaning as “forged”.

The matter now before me is not the appeal itself, so I must resist getting involved in detailed analysis and consideration of the merits or demerits of the appeal. But I can say this: As far as conviction is concerned, I do not find the applicant’s appeal to have overwhelming chances of success.

Regarding sentence, there appear to be technical problems about the legality of the level of some of the default prison sentences and that they may have to be interfered with and probably be reduced to some extent after hearing of the applicant’s appeal against sentence. To this latter extent, there appears to be a likelihood of partial success of the applicant’s appeal against sentence. Such anticipated limited success of the applicant’s appeal against sentence does not, however, necessarily bring the said applicant’s appeal to the status of one with full overwhelming chances of success such as to dictate the grant of bail pending appeal. The appropriate remedy in this regard may be for the applicant to approach the registry with a view to getting a date for hearing of the appeal itself.

The applicant’s application for bail pending appeal is hereby dismissed.

Orders accordingly.

Delivered at Nairobi this 18th day of February, 2004.

B.P. KUBO

JUDGE