



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPLICATION NO. 4 OF 2004

SAMSON KIPKOECH LANGAT.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant was convicted in two counts of robbery contrary to Section 296(1) of the Penal Code and sentenced to seven (7) years imprisonment. He filed an appeal against conviction and sentence and at the same time he filed an application for admission to bail pending appeal. The applicant's application was supported by an affidavit sworn by his advocate, Mr. Patrick Lumumba Nyaramba on 19th January, 2004 and also by a supplementary affidavit sworn by the same advocate on 16th February, 2004.

The counsel deponed that the applicant's appeal had high chances of success and so it was only fair and in the interests of justice that the appellant be granted bail pending appeal. It was also deponed that the applicant was seriously sick at the prison and he required to obtain specialised treatment which could not be facilitated at the prison. The applicant annexed to his advocate's affidavit a Discharge Summary dated 10th January, 2003 issued at Olenguruone Nyayo Hospital which showed that he had been diagnosed as being hypertensive. The document showed that the condition of the applicant as at the time of discharge was "Good". That hospitalisation was long before he was charged in the above matter.

There was no other medical evidence to show the applicant's recent condition that was exhibited.

Mr. Nyaramba also submitted that the applicant had been granted bail in the subordinate court while under going trial and he attended court faithfully. He cited the case of *CHIMANBHAI VS REPUBLIC [1971]E.A. 343* when the applicant had been convicted of handling stolen goods and had appealed against conviction and applied for bail pending appeal. The court held that anticipated delay in the hearing of the appeal together with other factors could constitute good grounds for granting bail pending appeal and in the circumstances, the applicant was granted bail.

The learned Senior State Counsel, Mr. Mutuku, opposed the application and submitted that the appeal did not have overwhelming chances of success and that there were no exceptional circumstances to warrant the grant of the application.

Regarding the applicant's health, Mr. Mutuku submitted that his alleged sickness was not life threatening and the prison authorities were well able to handle the same. He further submitted that the applicant had

been jailed for seven years which was a long time within which the appeal could be disposed of.

I have carefully studied the proceedings as well as the judgment of the trial court. I am not convinced that the application satisfies the principles set out in the case of **SOMO VS REPUBLIC [1972] E.A. 376** . It was stated that the applicant has to show that his appeal has overwhelming chances of success and that there exists exceptional or unusual circumstances to justify the grant of bail.

It is not enough for an applicant to allege that an appeal has overwhelming chances of success. He must show to the appellate court why he believes that to be so. If there are any glaring legal or procedural mistakes which are standing out either in the proceedings or in the judgment as are likely to cause the court to see that the appeal is well founded these should be pointed out. An applicant must make all the effort to show the appellate court that the applicant is truly deserving admission to bail pending appeal without necessarily arguing his appeal at that stage. This is particularly so because an applicant for bail pending appeal, unlike an accused person seeking bail before trial, cannot rely on the presumption of innocence as he has already been found guilty and convicted accordingly.

The applicant's learned counsel did not succeed in showing that the appeal had overwhelming chances of success and neither did he show any special circumstances that exist in the matter as would justify grant of the application.

Regarding the applicant's jail term, it is long enough to enable his counsel prosecute the appeal. The applicant's medical condition cannot justify release on bail pending appeal. The only evidence that was availed to the court showed that he suffered from hypertension in January, 2003 and as earlier stated, at the time of his discharge he was in good condition.

In conclusion the application for release of the applicant on bail pending appeal is rejected.

DATED, SIGNED & DELIVERED at Nakuru this 8th day of March, 2004.

DANIEL K. MUSINGA

AG. JUDGE

8/3/2004