



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS CRIMINAL APPLICATION
NO.678 OF 2003

JOSEPH MISATI GESORA..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

By Chambers summons filed on 29.08.03 the applicant sought the following two orders:

1. Consolidation of Criminal Appeal No.646 of 2003, which arose from Criminal case No.52 of 2001, with criminal appeal No.770 of 2003, which arose from criminal case No.3365 of 2002.
2. Bail pending appeal.

His application for consolidation of criminal appeal No.646 of 2003 with criminal appeal No.770 of 2003 was dismissed on 08.09.03.

The present ruling is concerned only with the applicant's remaining prayer for bail pending appeal against his conviction and sentence in Kibera Chief Magistrate's court criminal case No.3365 of 2002.

For the record, in the said criminal case No.3365 of 2002, the applicant faced the following 4 charges:-

Count 1

Personating a public officer, contrary to section 105 (a) of the Penal Code (Cap.63).

Count 2

Giving false information to a person employed in the public service, contrary to section 129 (a) of the Penal Code (Cap.63)

Count 3

incurring/obtaining credit by false pretences, contrary to section 316 (a) of the Penal Code.

Count 4

Incurring/obtaining credit by false pretences, contrary to section 316 (a) of the Penal Code.

Count 5

Personating, contrary to section 382 of the Penal Code.

On 23.07.03 the applicant was convicted on all 5 counts. The prosecution asked for time to get his records. By 06.08.03 no records had been obtained and the prosecutor asked the court to treat the applicant as a first offender and the court did so. However, the court observed that the offences were prevalent and on the same date (06.08.03) sentenced the applicant to 3 years on each of the 5 counts, sentences to run concurrently. The applicant appealed against conviction and sentence on all counts and also filed the present application for bail pending appeal

Learned counsel for the applicant, Mr. Angima submitted that the applicant's appeal has overwhelming chances of success. He argued the applicant's case against conviction on the 5 counts in reverse order and in essence maintained that no case was proved to support the applicant's conviction on any of the counts. Applicant's counsel urged that the applicant's application for bail pending appeal be allowed.

Learned counsel for the respondent, Miss Okumu opposed the applicant's application. She countered the applicant's counsel's submissions in the order in which they were made and maintained that all the 5 counts were proved against the applicant as required by law and that the applicant's appeal stands no overwhelming chances of success. Respondent's counsel urged that the applicant's application for bail pending appeal be dismissed.

I am not at this stage considering the merits or demerits of the applicant's appeal itself. However, to be able to deal with applicant's application for bail pending appeal, it was necessary for me to look at the trial court's record to get at least a preliminary view of what it contains.

It is now trite law that bail pending appeal may be granted if there are exceptional or unusual circumstances, giving the appeal high or overwhelming chances of success. In my respectful view, the applicant's appeal fails the requisite test.

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

Dated at Nairobi this 6th April, day of 2004.

B.P. KUBO

JUDGE