



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPLICATION NO. 102 OF 2004**

**OSBORNE MWAVISHI SACHERO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The appellant filed an application for bail pending appeal with an alternative prayer that the court be pleased to suspend the execution of the sentence in Chief Magistrate's Criminal Case No. 1020 of 2002 pending the hearing and determination of an appeal against conviction and sentence in the above matter.

The application was made on the grounds that the appeal had overwhelming chances of success and that it was highly probable that by the time the applicant's appeal was heard and determined he would have served the whole sentence. The applicant was sentenced to four years imprisonment on 7th July, 2004.

Mr. Githirwa for the applicant argued that the trial magistrate over relied on the evidence of a collaborator. He further submitted that the applicant was in very poor health and feared that he might die in prison before his appeal was heard.

Mr. Gumo, Assistant Public Prosecutor opposed the application saying that there was nothing to show that the applicant's appeal had overwhelming chances of success. No exceptional circumstances had been shown to warrant the applicant's release on bail pending appeal.

***In SOMO VS REPUBLIC [1972] E.A. 476*** it was held that an applicant for bail pending appeal has to show that his appeal has overwhelming chances of success and that there were exceptional or unusual circumstances that existed in his application.

I have perused the judgment of the trial court and the petition of appeal and from the two documents, I am not satisfied that the appeal has overwhelming chances of success. Unfortunately counsel did not annex to his application a record of the proceedings.

The fact that the applicant is in poor state of health is not in itself a sufficient ground upon which he should be released on bail pending appeal because he can be treated while he is in prison.

The applicant's sentence is also fairly long – 4 years, and there is no reason why his appeal cannot be

heard within a reasonable time. All in all, the application for bail pending appeal is rejected.

DATED, SIGNED & DELIVERED at Nakuru this 30th September, 2004.

**DANIEL MUSINGA**  
**AG. JUDGE**  
**30/9/2004**

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