

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPL. NO.135 OF 2004

HENRY MBENGO RIOBA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Applicant was the accused in Nakuru Criminal Case No.2492 of 2004. He was charged with Robbery Contrary to Section 296(1) of the Penal Code. The particulars of the offence were that on 14/8/2004 at Shabab Estate in Nakuru District within the Rift Valley Province jointly with others not before the court he robbed Mark Nyamao Otongo of Kshs.4300/- and at or immediately before or immediately after the time of such robbery used actual violence to the said Mark Otongo Nyamao When the charge was read to him it is indicated that he pleaded guilty although the exact words which he uttered are not indicated.

The Court Prosecutor read out the facts of the case and the applicant admitted the same. The court did not record the conviction but proceeded to sentence him to 6 years imprisonment.

The applicant appealed against the conviction and sentence and filed an application for bail pending appeal on the ground that his appeal has overwhelming chances of success. Mr. Gumo, Assistant Deputy Public Prosecutor conceded that the plea was unequivocal and said that a conviction was not recorded after the facts were read to the applicant. He did not oppose the application for bail pending appeal but indicated that the state would apply for a retrial. I have considered the application and I agree there were some flaws in the taking of the plea which may cause the appeal to be successful. The appeal may be said to be having overwhelming chances of success and in the circumstances I order that the applicant be admitted to bail pending appeal on his own bond of Kshs.5000/- with one surety of a similar amount

DATED, SIGNED & DELIVERED AT Nakuru this 24th Day of November, 2004.

D. MUSINGA

Ag. JUDGE

24/11/2004