REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS
APPELLATE SIDE
HIGH COURT CRIMINAL APPEAL 156 OF 2004
(From Original Conviction(s) and Sentence(s) in Criminal Case No 1 of 2003 of the Senior Resident Magistrate's Court at Kangundo N. N. Njagi (Esq.) on 29/9/04)

PATRICK MOSE MUINDE ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

R U L I N G

The applicant Patrick Mose Muindi was convicted of the offence of Manslaughter Contrary to Section 202 and 205 of the Penal code. He was sentenced to life imprisonment. He has filed an application dated 18/10/04 seeking to be admitted to bail pending the hearing of his appeal and that the court do stay the sentence pending the hearing and determination of the appeal. The applicant has filed an appeal No. 156/04 in which this application is brought.

The grounds upon which the application is based are found in the body of the application and the application is also supported by the affidavit of the applicant. Mr Wambua Kilonzo argued three grounds. The key ground argued was that the applicant has high chances of success on appeal. On that ground, he argued that the applicant was convicted on circumstantial and hearsay evidence and, therefore, no prima facie case was established by the prosecution.

The second ground argued was that the appeal will be rendered nugatory and applicant will suffer irreparably if he were to continue serving the sentence. The last ground argued is that the applicant is the sole breadwinner of his family and is willing to provide any security and willing to abide by all conditions that may be set by the court.

Mr O'Mirera for the Respondent opposed the application. It was his contention that the applicant has not demonstrated that his appeal has overwhelming chances of success because the evidence on record established a case beyond any doubt, being evidence of recognition and dying declaration. That the fact that there was no forensic evidence and the fact the medical evidence was produced by a police officer does not weaken the Respondent's case because the death was instantaneous.

As regards the sentence, it was urged that it is not a ground for a bail application.

The principles applicable in determining an application for bail pending appeal include the first ground argued by the applicant that the appeal has overwhelming chances of success and that a substantial part of the sentence is likely to be served if bail is not granted. On this ground I have scanned the record of the lower court together with applicant's submissions and I am satisfied that the applicant has not demonstrated that this appeal is likely to succeed. In fact the standard is that the applicant would only demonstrate that the appeal has a likelihood of success but not overwhelming chances of success. **REF – JIVRAJ SHAH** versus **REPUBLIC 1986 KLR 605 .** There is ample evidence on record, in my view, that led to the conviction and the court would not like at this stage to pre - empt the appeal.

The appellant was sentenced to life imprisonment. He is not likely to serve a substantial part of that sentence before the appeal is heard. The issue of whether itis harsh can only be considered at the time of appeal or if the court found that the appeal had no likelihood of success.

The other principle for consideration in such an application is the existence of exceptional or unusual circumstances that would entitle the court to conclude that it would be in the interests of justice to grant the application. Apart from saying that the applicant is the breadwinner which was not even substantiated, there are no special circumstances shown by the applicant, to support the grant of bail pending appeal.

Accordingly, I find no good grounds to warrant the grant of bail at this stage. The application is dismissed, let the applicant prepare the record of appeal and have it set down for hearing.

Dated at Machakos this 14th day of December 2004

R.V. WENDOH

JUDGE