

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISC. CRIMINAL APPL. NO. 334 OF 2004

Intended Appeal from conviction(s) and Sentence(s) of the Chief Magistrate's Court at Kiambu Criminal case No. 2628 of 2002

ANTONY KAMAU MACHARIA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

The Applicant has by Chamber Summons dated 17th June 2004 applied for two prayers.

- 1) That the Court be pleased to grant him bail pending arrest.**
- 2) That in the alternative the court orders that his Appeal be heard urgently.**

The Applicant had been charged with **ROBBERY WITH VIOLENCE** contrary to **Section 296(2)** of the Penal Code in eight counts. After that trial, the Court convicted him for **SIMPLE ROBBERY** contrary to **Section 296(1)** of Penal Code and sentenced him to 10 years imprisonment. He was also convicted in counts 6, 7 and 8 with **HANDLING STOLEN GOODS** and sentenced to serve 7 years imprisonment. Each prison term is to run concurrently.

The ground argued by the Applicant in support of his Application is that he was ill. He produced documents to prove he was asthmatic. He submitted that there was insufficient treatment in remand.

MR. OLENGO, learned counsel for the Respondent opposed the Application. He submitted that no sufficient or good reason was given to warrant the Court to grant the Application. He submitted that having gone through the Prosecution, he was of the view that the Appeal had no overwhelming chances of success.

I have considered this Application. The Applicant's basis is purely on medical grounds. He has not adduced any evidence to show that the medical grounds he had were exceptional or unusual. Records he produced to prove his conditions are also proof that he was getting medical treatment while in prison. That alone, without any other proof would not warrant the court to grant bail.

I have also considered the sentence the Appellant is facing. There is no possibility that the Applicant may serve the sentence before his Appeal is heard.

I find no unusual or exceptional circumstances to move this court to grant bail pending appeal. That prayer is therefore dismissed.

On the Appeal being held urgently, I see no reasonable cause provided to warrant the Court to find that the Appeal should be heard urgently. That prayer is also dismissed for lack of merit.

Dated 8th December 2004, at Nairobi.

LESIIT

JUDGE