



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPLICATION NO.585 OF 2002**

IDRIS YUSUF BWANA) MOHAMMED GHANI TAIB.....Appellant

Versus

REPUBLIC.....Respondent

The two applicants brought this application seeking bail pending appeal. The 1st applicant (Idris Yusuf Bwana) the main affidavit in support of his application file on 12th June 2002. He also put in written submissions to support his appeal.

The second applicant (Mohammed Ghani Taib) also put in an application for bail pending appeal supported by his affidavit dated 9th September 2002. He has relied on the grounds that he is ailing, weak, frail and an unstable state of health. I have studied the applicant's written submissions in support of their application for bail pending appeal.

I have noted that Mr. Monda for the state opposed the application vehemently and argued that the appellants appeals do not have any chances of success. While considering an application for bail pending appeal the court must be guided by the question of whether or not the applicant had demonstrated to the court that his or her appeal has overwhelming chances of success. In order to come to this kind of conclusion there is need for the Judge to study the proceedings and the Judgment of the lower Court.

I have carefully studied the proceedings of the lower Court in Nairobi Chief Magistrate Criminal Case No.1154/2000 in so far as such proceedings touch on the case against the two applicants.

Without preempting the success or otherwise of the pending appeal, it is my considered view that the application by the 2nd applicant herein Mohammed Ghani Taib should not succeed. As concerns the 1st applicant herein it is my considered view that he is entitled to bail pending appeal as prayed. I therefore admit the 1st applicant Mr. Idris Yusuf Bwana to bail pending his pending appeal.

I order that the applicant will be released on his own bond of five million Kenya shillings together with one surety of the like amount.

Failure to raise such a surety will lead to the applicant continuing to serve the current jail sentence. Upon release on bond the applicant will be attending mentions of his pending appeal before Deputy Registrar (Criminal Division) as he wants to present his appeal.

Mentions will be after every 30 days. Order accordingly.

R.M. MUTITU

JUDGE

13/1/2002

Delivered, dated and signed in open Court in the presence of Mr. Wandungi for the applicants and in the presence of Miss Nyamosi for the respondents.

R.M. MUTITU

JUDGE

13/1/2002

Order:

Hearing of the appeal be done on priority basis.

R.M. MUTITU

JUDGE

13/1/2003