



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
CRIMINAL APPEAL NO. 547 OF 2000**

(From the original conviction and sentence in Criminal Case no. 539 of 2000 of  
the Senior Resident Magistrate, Ms. Betty Maloba at Mombasa)

**WILLIAM DUBI IKIWO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

The main grounds advanced as the basis for seeking bail pending Appeal in this matter are that the trial and Judgement were illegal and that the sentence lacks an order that it should be served concurrently.

The Applicant was convicted on two counts of personating a Police Officer contrary to Section 105 (b) and demanding property with menaces contrary to Section 302 of the Penal Code. He was sentenced to serve 3 years on each count by Mombasa Senior Resident Magistrate on 22.11.00. The Applicant to succeed in the Application ought to show that there are exceptional or unusual circumstances in the case to warrant grant of the order. They may range from the character or personal circumstances of the Appellant, the possibility of substantial delay in hearing the Appeal, the nature of the offence, the length of sentence, danger of repetition of the offence after release or a combination of these and most importantly whether the Appeal has overwhelming chances of success either on conviction or sentence. Those were the guidelines set out in Somo V R (1972) EA 476.

Counsel for the Applicant Mr. Magolo relies on the exceptional circumstance that the trial, Judgement conviction and sentence of the Applicant was completed on the same day the Applicant testified in his defence. He appeared shocked at such expeditious disposal of a Criminal matter while Senior State Counsel Mr. Gumo lauds it as a good example of expediting the disposal of Justice.

Whatever suspicions the Appellant may have which must await the Appeal, I do not think it should be a source of complaint that a trial has been concluded without delay, even exceptionally fast. What matters is whether it was carried out in accordance with the law and procedure and that justice was done. Although the appellant gave his evidence on the same day the Judgement was written and delivered, his defence was considered in that Judgement.

As for sentence, an Appellate Court would not normally interfere with the lower courts exercise of discretion unless that court acted upon some wrong principle or overlooked some material factor or it is manifestly excessive in view of the circumstances.

The maximum sentence under S.105(b) Penal Code is 3 years, while that under S. 302 is 10 years.

Maximum sentence will not normally be imposed on a first offender unless it is for special reasons recorded. The Appellate Court may well interfere with the sentence of the first count. The sentence cannot be said to be excessive on the 2nd count. But section 14 of the Criminal Procedure Code provides that sentences in cases of conviction of several offences at one trial shall commence one after expiration of the other unless the court directs that the punishments shall run concurrently. There was no order that the sentences shall run concurrently in this case. No reason was given for failure to make such an order which on the face of it was desirable. The Appellate court may well interfere with the sentence to that extent.

Does that warrant the release of the Applicant pending the hearing of the Appeal?

It has not been shown that there will be unreasonable delay in the hearing of the Appeal or that a substantial term of the sentence will be served before such hearing. It is unlikely that the sentence, if the conviction is upheld will be less than 3 years in aggregate. Only two months have been served so far.

I am not inclined to grant the application and I dismiss it.

**Dated at Mombasa this 12th day of January, 2001.**

**P.N. WAKI**

**J U D G E**