



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL APPEAL CASE NO. 55 OF 2020**

**HILLARY KIPCHIRCHIR.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING:**

HILLARY KIPCHIRCHIR LAGAT was charged in the lower Court with two counts of attempted murder, contrary to section 220 (a) of the Penal Code.

The particulars of the offence in the first Count are that on the 27<sup>th</sup> day of December 2015 at Annex Trading Centre in Wareng District of the Uasin Gishu County, the applicant jointly with another before Court unlawfully attempted to cause the death of Peter Kibinge Chege by shooting him with a gun.

The particulars in the second Count are that on the 27<sup>th</sup> day of December 2015 at Annex Trading center in Wareng District of the Uasin Gishu County, the applicant jointly with another before Court unlawfully attempted to cause the death of Alfayo Otenga Omulando by shooting him with a gun.

The case was heard and both suspects were found guilty on both counts, and on each count, each was sentenced to serve five years imprisonment; sentences to run concurrently.

The applicant herein dissatisfied with the said conviction and sentence, appealed against both and raised nine grounds of appeal. He as well applied for bond or bail pending appeal of which is the subject of this ruling.

Mr. Miyianda argued the application and averred that the appeal has overwhelming chances of success. The strongest ground of appeal is that the identification of the applicant is absent. When the incident allegedly happened, it was dark. The prosecution case is also riddled with contradictions of which makes it doubtful. The said doubts should have been resolved in favour of the applicant. On the grounds the Court is urged to find the application merited and release the applicant on reasonable bond terms pending hearing of his appeal.

The state opposed the application on the grounds that the appeal is weak and stands no chance of success. The applicant was rightfully convicted.

Identification by PW-3 and PW-4 was proper. The evidence is consistent. As of now the applicant is a convict and had a warrant of arrest issued in the lower Court for missing Court attendance. They urged the Court to dismiss the application and fix the appeal for hearing.

Bail or bond pending appeal must be viewed in a different manner from bond pending trial. For bond pending appeal, the applicant is a convict who is serving a legal sentence until found otherwise by a Court of law, probably on appeal. Different principles for consideration therefore applies as was held in the case of *Masrani Vs. Republic (1060) EA321*.

In *Jiv Raji Shah Vs. Republic (1966) KLR 605*, it was held that the applicant must establish existence of exceptional or unusual circumstances upon which the Court can fairly conclude that it is in the interest of justice to grant bail. It must also be shown that the appeal is likely to be successful on account of a substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard.

In *Somo Vs. Republic EALR (1972) 476*, it was held that the applicant must establish that there's an overwhelming probability that the appeal would succeed. The appeal in this regard must have been admitted to hearing as an indication that its not frivolous and vexatious.

Weighing the case at hand, the appeal is yet to be admitted to hearing. The grounds alleged by the applicant that they demonstrate his appeal have overwhelming chances of success, are challenged by the state prosecutor and their real weight can only be ascertain in the hearing of the appeal. The grounds are not obvious or outright which at this point fails to establish that the applicant has overwhelming chances of success. He is serving a 5 years jail sentence from 20/11/2020. Our appeal diary is not far and the appeal can conveniently be heard before he has served a substantial part of the sentence. The applicant who's no longer a suspect but a convict who received a substantial sentence, the temptation to abscond if released on bond is higher than it was at the lower Court. He was convicted of two serious offences of attempted murder; there are no special or extraordinary personal circumstances availed showing a good case as to why he deserves bond or bail pending hearing and determination of the appeal. I therefore find the application void of merit and is dismissed.

The appeal should be processed for admission and hearing soonest possible.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 6<sup>th</sup> day of May, 2021**

In the presence of:-

Mr. Miyienda for the accused person

Corazone Muhonja for the state

Gladys - Court assistant