

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. E021 OF 2021

(From Original Conviction and Sentence in Butere PMCCRC No. 114 of 2018,

by Hon. F. Makoyo, Principal Magistrate, of 18th June 2021)

PETERLICE ODUOR SIJENYI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant was convicted by Hon. F. Makoyo, Principal Magistrate, on 18th June 2021, on 3 counts of conspiracy to commit a felony, forgery and intermeddling with the property of a dead person, contrary to sections 393 and 350(1), respectively, of the Penal Code, Cap 63. Laws of Kenya, and section 45(1) of the Law of Succession Act, Cap 160, Laws of Kenya, respectively, and was accordingly sentenced to fines or imprisonment for periods ranging between 6 and 18 months, but was acquitted of the forgery charge. He subsequently moved to the High Court in this cause for bond pending appeal.

2. The appeal was argued both orally and in writing. I have noted the arguments made by both sides.

3. Bail pending appeal is provided under section 357 of the Criminal Procedure Code, Cap 75, Laws of Kenya. It is undoubtedly a right that accrues to the appellant herein, and I need not reproduce the provision verbatim in this ruling.

4. It was stated, by the Court of Appeal, in *Mutua vs. R* (1988) KLR 497, (Platt, Apaloo JJA & Masime Ag JA) that:

“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal. It is not wise to set the applicant at liberty either from the point of view of his welfare or of the state unless there is real reason why the court should do so.”

5. A court faced with an application for bail pending appeal has to exercise discretion judicially, upon taking into account various factors, which include whether the appeal has overwhelming chances of success (see *Ademba vs. Republic* (1983) KLR 442 (Potter, Kneller & Hancox JJA), *Somo vs. R* (1972) EA 476 (Trevelyan J) and *Mutua vs. R* (supra), whether there exist exceptional or unusual circumstances to warrant the exercise of discretion in favour of the applicant (see *Raghubir Singh Lamba vs. R* (1958) EA 337 (Spry Ag J), and whether there is a high probability of the sentence being served before the appeal is heard (see *Chimabhai vs. R* (1971) EA 343).

6. One of the principles set out above, (Harris J) that the appellant anchors his application on is that the term of imprisonment imposed was fairly short, and he fears that he might serve it out before the appeal is heard and determined. He also pleads that he has a fairly substantial appeal, and that his health was giving him challenges.

7. An appellant is entitled to his day in court. I note that the terms of imprisonment imposed are fairly short, and could be served out before the appeal is heard, and determined. I will exercise discretion in favour of the appellant, and allow the application. He is admitted to his own bond of Kshs. 200, 000.00 with a surety of similar amount, or cash bail of Kshs. 100, 000.00.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17th DAY OF September 2021

W MUSYOKA

JUDGE