



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

MISC. CRIMINAL APPLICATION NO. 2 OF 2019

RICHARD KIPYEGON CHEBOI.....APPLICANT

=VERSUS=

REPUBLIC.....RESPONDENT

RULING

1. The appellant, who was convicted and sentenced to pay a fine of Ksh.100,000/= and in default serve imprisonment for 12 months for each of 2 counts of conspiracy to defraud contrary to section 317 of the Penal Code and theft by person employed in Public Service contrary to section 280 of the Penal Code, has applied for bail pending appeal to this Court.

2. The conviction and sentence were made on 21/12/18, and the appellant has consequently served his imprisonment term in default of payment of the fines for a period of 5 months. With remission, an imprisonment term of 12 months is only **9 months** and the appellant has, therefore, served over half of his default sentence in the first count.

3. In opposing the appeal, the DPP cited *Karsan v. R* (1986) KLR 612 requiring an overwhelming chance of success of the appeal; *Somo v. R* (1976) KLR 476 that a solemn promise not to abscond is not sufficient ground for grant of bail pending appeal and this Courts our decision in *Boke Chacha v. R* Kisii HCCRA No. 212 of 2012 and urged that there are no unusual or exceptional circumstances for the grand of bail pending appeal.

4. However, as stated in the authorities cited by the DPP, the fact that the appellant may have served a substantial portion of his sentence by the time the appeal is heard and determined is an exceptional circumstance that warrants the grant of bail pending appeal.

5. In this case, the appellant who has appealed from the whole decision of the trial Court will undoubtedly have served the first sentence on count no.1 in full by the time the appeal is heard and determined, seeing that as at 21/5/2019, the appellant had already served more than half of the 12 months default sentence.

6. If the application for bail pending appeal is refused, the appellant's appeal from the conviction and sentence on the first count will be rendered nugatory as he will already have served in full or substantial portion thereof by the time the appeal is heard and determined.

7. At the time of the hearing of the application on 30/4/19, the Court did not have the benefit of the trial Court file and it is now able to confirm from the lower Court file that the sentence on each count of the charge sheet was not 200,000/= or 2 years imprisonment as deponed by the appellant in Supporting Affidavit of 20/2/19, where he says:

“3. I am serving two (2) years imprisonment or a fine of Ksh.200,000/= for each count.”

The application file was in addition not presented to me for preparation of ruling earlier.

8. The sentences of the trial Court are actually as follows:

*“Count I: The accused is sentenced to pay a fine of **Ksh.100,000/=** in default **12 months** imprisonment.*

*Count II: he is sentenced to pay a fine of **Ksh.100,000/=** in default **12 months** imprisonment. Sentences to run consecutively.”*

Orders

9. For the reason that the appellant may have served a substantial portion of his sentences by the time the appeal is heard and determined, the appellate Court finds exceptional circumstances to warrant the release of the appellant on bail pending appeal.

10. The appellant shall be released on a bond of Ksh.200,000/= with one surety of the same amount.

11. The Court shall give directions for the hearing of the appeal as the Record of Appeal is now ready on dates convenient to Court and the parties.

Order accordingly.

DATED AND DELIVERED THIS 12TH DAY OF JUNE 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Applicant in person.

Mr. Joseck Abwajo, Prosecution Counsel for the Respondent.