



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE APPEAL (APPLICATION) NO. 2 OF 2018

DANIEL RIUNGU MARETE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **DANIEL RIUNGU MARETE (RIUNGU)** was convicted before the Nanyuki Chief Magistrate's Court for the offence of **obtaining money by false pretence Contrary to Section 313 of the Penal Code**. On conviction the trial court sentenced him to 2 years imprisonment.

2. Riungu by his application dated 7th February 2018 seeks bail pending appeal. He seeks bail on the grounds that he is an elderly man who suffers several ailments which include diabetes and prostate disorder; that due to his ill health he needs to observe a strict diet and medication regime which he stated is unavailable in prison; and that his appeal has high chances of success.

3. The application was opposed by the Principal Prosecution's Counsel Mr. Tanui on the basis that Riungu, the applicant, failed to attach proof that he is ailing; because on the basis of the attached photocopied trial court's proceeding, which are eligible, one is unable to determine if his appeal has high chances of success; and that in prison Riungu would be able to receive proper medication and diet for him condition.

4. The courts have had opportunity to set out the principles that should guide a court when considering an application of bail pending appeal. In the case: **CHIMAMBHAI vs REPUBLIC [No.2] {1971} E.A 343** the court held as follows:-

“ The case of an appellant under sentence of imprisonment seeking bail lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely, the presumption of innocence, but nevertheless the law of today frankly recognizes, to an extent at one time unknown, the possibility of the conviction being erroneous or the punishment excessive, a recognition which is implicit in the legislation creating the right of appeal in criminal cases...”

5. As the above case shows Riungu has no right, even under the constitution, to bail pending appeal. This is because he is no longer presumed innocent. But the court, where the principles set out in decided cases are satisfied or where the court exercises the power under **Section 357 of criminal Procedure Code**, can grant bail pending appeal.

6. The case of: **JIVRAJ SHAH VS REPUBLIC (1986) KLR 605** laid down the said principles of granting bail pending appeal as follows:

“(i) The principal consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests of justice to grant bail.

(ii) If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some 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, conditions for granting bail exists.”

7. What are the exceptional circumstances in this matter. In my view there are none. Riungu, according to his national identity card, is 68 years old. Although he claims to be unwell, there was no evidence attached to his application of such illness. Moreover the prison authorities, if informed, can provide a prisoner with the required diet and medical treatment.

8. It follows that I find no merit to grant the application but perhaps most importantly I find there is no merit because Riungu did not attach a petition of appeal. So as far as this court is concerned Riungu has not filed an appeal and therefore has no basis to grant bail pending appeal.

9. Accordingly the application dated 7th February 2018 is dismissed.

Dated and Delivered at Nanyuki this 18th April 2018

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant Daniel Riungu Marete

For state:

Language

COURT

Ruling delivered in open court

MARY KASANGO

JUDGE