



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION & ECONOMIC CRIMES DIVISION

CRIMINAL APPEAL SUIT NO. 5 & 6 OF 2018

BONIFACE OKEROSI MISERA.....1ST APPELLANT/APPLICANT

CEPHAS KAMANDE MWAURA.....2ND APPELLANT/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Bonface Okerosi Misera** and **Cephas Kamande Mwaura** the appellants/applicants herein filed applications under Articles 49 and 159 of the Constitution as read with Section 123, 350-352, 354, 356 and 357 of the Criminal Procedure Code seeking their release on bond pending hearing and determination of their appeals.

2. Their respective applications are dated 26th March, 2018 and supported by the grounds in the applications and the supporting affidavits. The applications have been opposed by the State.

3. The main grounds for the applications as stated by the applicants are;

- (i) Overwhelming chances of success of the appeal;
- (ii) That the applicants are elderly and sickly; and
- (iii) The matter in the lower court took too long (9-10 years) and they never failed to attend court.

4. A brief background to this matter is that both appellants were convicted by the Nairobi Chief Magistrate's Anti-Corruption Court vide ACC No. 44 of 2010 for the offence of fraudulent acquisition of public property contrary to Section 45 (1) (a) as read with Section 48 of Anti-Corruption & Economic Crimes Act (ACECA).

They were convicted on 23rd March 2018. The 1st appellant was fined Kshs.40,000,000/= in default one year imprisonment. The 2nd appellant was fined Kshs.37,200,000/= in default one year imprisonment.

5. The appellants filed their petitions of appeal herein on 6th of April, 2018 and the same were admitted to hearing on 16th April, 2018. The appeals and applications were finally heard on 2nd May 2018. In other words, from the date of conviction to the date the consolidated appeals being heard is exactly five (5) weeks!

6. The considerations to be taken care of in an application for bond pending appeal have been stated in several cases. In the case of **Dominic Karanja –vs- Republic (1986) KLR 612**, the Court of Appeal held;

“(a) The most important issue was that if the appeal had such overwhelming chances of success there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.

(b) The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstances where there existed medical facilities for prisoners.

(c) A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground

for releasing a convicted person on bail pending appeal.

(d) Upon considering the relevant materials in this case, there was no overwhelming chance of the appeal being successful.”

7. Bearing in mind the holding by the Court of Appeal in the *Dominic Karanja case (supra)*, I wish to address the grounds raised by the appellants.

8. It has been stated in their supporting affidavits and also in the submissions that the appellants are elderly and sickly. There is no report from the prisons department showing that the facility is unable to take care of the appellants’ health issues. Secondly, the appellants are not as elderly as counsel want this court to believe. I have seen them in court.

9. *Mr. Ondieki* submitted so much about the long period the matter took in the lower court and how the appellants had faith and always reported to court, while on bond. *Mrs. Aluda* for the respondent submitted that the delay was caused by the appellants as it took five (5) years to have their defence heard.

10. Another issue for consideration is whether there is a likelihood of delay in hearing of the appeal. This is inapplicable in this instant because the appeal has already been heard in a record period of five (5) weeks. The same is pending judgment.

11. The remaining and most important issue for consideration at this stage is whether the appeal has an overwhelming chance of success. See *Chimambai –vs- Republic 1971 EA 343 & Dominic Karanja –vs- Republic (supra)*.

12. I have heard the appeal to its final end and serious issues of law have been raised by both parties. The same need to be considered alongside the recorded evidence. I would not wish to cause any anxiety on preempt the outcome of the appeal. All I can state is that success of the appeal is not as obvious as the applicants may wish this court to believe. The appeal would go either way.

13. After considering the application and all factors herein, I find it prudent that this court be given the opportunity to finalize this appeal. There is no violation of the appellants’ rights by them being denied bond at this stage as they have been convicted by a competent court of law. The application for bond pending appeal is therefore declined.

Judgment to be delivered on 6th June 2018.

Orders accordingly.

Delivered, signed and dated this 4th day of *May*, 2018 in open court at Nairobi.

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HEDWIG I. ONG’UDI

HIGH COURT JUDGE