



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 17 OF 2018

CHARLES MUKUNDI NJERU.....APPLICANT/APPELANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The applicant in his application dated 18/05/2018 seeks for orders for bail pending appeal.
2. The applicant was charged and convicted of the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code. He was sentenced to serve two (2) years imprisonment.
3. The grounds relied on are that this appeal is likely to be successful on points of law; that the determination of the appeal is likely to take long which may result in the applicant serving the full sentence; that the appellant was denied an opportunity to get a handwriting expert to testify in his defence; that the case was not proved to the required standards and that improper evidence was allowed by the court.
4. The respondent opposed the application on the grounds that the appeal has no chances of success given that the evidence of the prosecution was overwhelming and that the defence was a mere denial. It was further stated that there are no special circumstances that have been demonstrated to justify granting of bail pending appeal. As for the likelihood of delay, the respondent argued that the appeal ought to be fixed for hearing at the earliest time possible.
5. The parties agreed to adopt their pleadings in canvassing this application. A copy of the judgment was availed for purpose of hearing this application. I have perused it and noted that the applicant was convicted of two charges. Firstly, an offence of obtaining Kshs.200,000/= by false pretences contrary to Section 13 of the Penal Code. Count II was that of threat to kill contrary to Section 223(1) of the same code.
6. It comes out clearly that the complainant did not testify in this case. There was evidence earlier recorded by a preceding magistrate which was used by the succeeding magistrate to convict the applicant in a case that had started *de novo*.
7. It is my considered opinion that the issue of the said evidence and the manner in which it was handled is a crucial one in this appeal. The appeal court must examine the said evidence and the procedure followed and determine its admissibility. Without pre-empting the appeal, this scenario demonstrates that there exists a possibility of the appeal becoming successful.
8. I find that although there are no special or extra-ordinary circumstances shown in this application, the applicant has demonstrated that his appeal is not vexatious or frivolous.
9. For the foregoing reasons, I allow the application for bail pending appeal in the following terms:-
 - (a) *That the applicant be and is hereby released on bond of Kshs.300,000/= with two (2) sureties of a like amount.*
 - (b) *That pending the hearing and determination of this appeal, the applicant to attend monthly mentions before the Deputy Registrar.*
 - (c) *That the applicant shall not leave the jurisdiction of this court without the permission of the court.*
10. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF JULY, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Guantai for Mugambi for Applicant

Ms. Mati for Respondent