

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

CRIMINAL APPEAL NO 27 OF 2018

MOHAMED ATHMAN ABDI Alias ENERGIZER....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This appeal has been heard and is pending judgment. The appellant has however made an application to be released on bail pending delivery of the judgment on grounds that he was unwell. Mr. Omwancha for the appellant submitted that the appellant was in need of medical care which was not available in prison custody. He showed the court the treatment notes in respect to the appellant.
2. Mr. Kasyoka for the state submitted that he had no position on the matter and left it to the court.
3. I have considered the application. This in fact is a review application. The appellant had initially filed an application for bail pending appeal. That application was declined and the court instead directed that the appeal be filed and fast tracked. Following the court's directions, the appellant did file the record and the appeal was heard expeditiously. It is now pending judgment.
4. In the present application the appellant states that he was in need of medical care outside the prison. I have looked at the medical report. It recommends further investigation and management of the condition the appellant suffers from. While it is true that the appellant would access better medical care outside prison the document he submitted from the medical clinic does not say that he cannot be referred to an appropriate medical facility. This ground therefore fails.
5. It is the appellant's submission that the appeal has a high chance of success and that therefore it would be rendered nugatory. I will not comment on the submission with respect to the probability of the appeal succeeding or not for the simple reason that the appeal is now pending judgment. Nonetheless, I observe that the appellant was sentenced to life imprisonment. There is no chance therefore that there would be such delay in the conclusion of the appeal as to render the appeal nugatory.
6. For those reasons, I am not persuaded that the application is merited. It is dismissed. The appellant shall continue serving sentence pending judgment in his appeal.

Orders accordingly.

Ruling delivered dated and Signed at Garsen on 19th day of November 2018.

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R.LAGAT KORIR

JUDGE

In the presence of:-

.....C/A

.....Appellant

.....For Appellant

.....For Respondent