



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 98 OF 2014

REPUBLIC PROSECUTOR

VERSUS

JAMES OKONG'O ACCUSED

RULING

The appellant herein **JAMES OKONG'O** has through his advocate **MR. OBUTU** applied to be released on bail during the pendency of his appeal. The appellant had been earlier convicted in the Magistrate's Court in Molo of the Offence of **Robbery with Violence Contrary to Section 296(2) of the Penal Code** and was sentenced to a term of Life Imprisonment.

The application was opposed by the learned State Counsel.

At this stage the court is not being asked to make a determination regarding the merits or otherwise of the appeal. All that the court is being asked to do is to determine whether the appellant ought to be released on bail during the pendency of his appeal.

There are several factors a court must consider in determining such an application

- i. The nature and circumstances of the offence
- ii. Whether the appeal is likely to succeed
- iii. Whether the appellant is a flight risk
- iv. Whether the appellant is likely to re-offend if released on bail
- v. Whether the offender will have served a substantial part of his sentence before his appeal is heard and determined.

At this stage, having been convicted by a duly constituted court of law the appellant can no longer rely on the presumption of innocence or claim a right to bail in a similar way a suspect who has not been tried and convicted would do.

I have carefully perused the record of the trial in the lower court. I have addressed my mind to the various considerations for and against the grant of bail. I have also considered the submissions made by both counsels. Whilst not wishing to prejudge the appeal, I find no merit in this application and I decline to

grant bail to the appellant. He shall continue to serve his sentence until his appeal is heard and finalized.

Dated in Nakuru this 10th day of February, 2017.

Mr. Obutu for Applicant

Mr Chigiti for State.

Maureen A. Odera

Judge