



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL CASE NO. 45 OF 2017
ABDUL KADIR ANOD DOLE APPELLANT

Versus

REPUBLICRESPONDENT

AND

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL CASE NO. 46 OF 2017

EGAL BILAD ABDALLAH APPELLANT

-Versus-

REPUBLIC RESPONDENT

RULING

1. This Ruling relate to two different appeal files as is apparent from the above title. The appellants in both above appeals were co-accused before the Nanyuki Chief Magistrate's court being Criminal case No. 903 of 2011.

2. **ABDUL-KADIR ANOD DOLE (Abdul)** was convicted in that case for the offences of being in possession of a Government trophy, namely two rhinoceros horns, and one piece of elephant ivory **Contrary to Section 42 (1)(b) as read with Section 52 (1) of the Wildlife (conservation and Management) Act Cap 376;** being in possession of implements of forgery, namely five colour printer cartridges and one paper cutter, **Contrary to Section 367 (b) of the Penal Code 63;** and being in possession of forged currencies, namely 2,360 pieces of denomination of Ethiopia Birr notes, **Contrary to Section 367 (e) of the Penal Code Cap 63.**

3. **EGAL BILAD ABDALLAH** was convicted of the offence of being in possession of a Government trophy, namely two rhinoceros horns and one piece of elephant ivory **Contrary to Section 42 (1) (b) as read with Section 52 (1) of the Wildlife (conservation and Management Act Cap 376.**

4. Both Abdul and Egal have filed their appeals against their conviction and sentences. Pending the

hearing and determination of those appeals they seek that this court does grant them bail.

5. In most of the previous decisions of bail pending appeal it is clear that an applicant is required to show that his appeal has high chances of success see the case of **SOMO – V- REPUBLIC [1972] E A 476. Spry Ag. J** in considering the principles of granting bail pending appeal in the case **RAGHBIR SINGH LAMBA – V- R (1958) E.A 337** it was held:

“i. The principle to be applied is that bail pending appeal should only be granted for exceptional and unusual reasons.

ii. Neither the complexity of the case nor the good character of the applicant, nor the alleged hardship to his dependents justified the grant of bail, but had the court been satisfied that there was an overwhelming probability that the appeal would succeed, the application would have been granted.”

6. On behalf of the applicants, Abdul and Egal, it was argued by their Learned Counsel Mr. Kiget that their appeals have high chances of success and if not granted bail pending appeal they will substantially serve their sentences. The applicants are husband and wife. Learned counsel submitted that Abdul was 70 years old, although there was no documentary evidence of that age, and that Egal is elderly, similarly there was no documentary evidence of her age. It was further submitted that the trial of both applicants commenced in the year 2011 and ended on 11th May, 2017 and that while they were on trial they were out on bail but dutifully attend court throughout that period. It was argued that being in custody awaiting the hearing of their appeal, the applicants, because they are their family’s breadwinners, will suffer prejudice. It was also submitted that this is a period of Ramadan and the applicants request they be granted bail during this time.

7. Even as I begin to consider the applicant’s applications I must begin by stating that I am hampered by the lack of the trial court’s proceedings. The applicant only annexed the trial court’s judgment. On my consideration of that judgment it seems to me that the chances of success of the applicant’s appeals is not high. Incidentally the applicant did not set out where the trial court erred to entitle them to state that their appeal has a high chances of success.

8. The applicant’s emphasis was on their argument that if they are not granted bail pending appeal, and because their appeal has high chances of success, they will have served a substantial part of their sentence by the time their appeal is heard. In respect to the registry of Nanyuki High court there is a high chance of obtaining an early hearing date of the applicant’s appeal. It is appreciated, however, that the applicant’s trial before the Chief Magistrate’s court took too long, six years. With that in mind at the reading of this Ruling the court shall fix a hearing date of the appellants appeal. It is important to note that the considerations of an application of bail pending appeal are different from an application for bail pending trial. This is because after conviction the presumption of innocence is absent. This was clearly stated in the case **PUBLIC PROSECUTOR -V - MCEWEN [2011] VUSC 280 CRIMINAL CASE NO. 80 OF 2010 (9 September 2011)** viz:

“The grant of bail pending appeal is not the same as an application for bail pending trial where the defendant has a presumption of innocence in his favour. After a conviction the presumption, if one can call it that, is reversed and there is no longer a presumption of innocence. Indeed the position is that unless and until a conviction is set aside or quashed it remains valid for all intents and purposes including as some justification for sentence imposed.”

9. In the end the application far bail pending appeal dated 22nd May, 2017 by **ABDUL-KABIR ANOD DOLE** in Criminal Appeal No. 45 of 2017, and the application dated 22nd May, 2017 for bail pending appeal filed by **EGAL BILAD ABDALLAH** are hereby dismissed. The applicant’s respective appeals shall today be fixed for hearing.

Dated and Delivered at Nanyuki this 6th day of June 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue/ Maria Stella

1st Appellant: Abdul Kadir Anod Dole

2nd Appellant Egal Bilad Abdallah

For the Appellant

For the State:

Language

COURT

Ruling delivered in open court.

MARY KASANGO

JUDGE