



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 14 OF 2016

ANTONY MURIUKI GACHOKI.....APPELLANT/APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

(An appeal from the conviction and sentence of the Principal Magistrate's Court (M. Onkoba) at Gichugu, Criminal Case

No. 756 of 2014 dated 22nd February, 2016)

RULING

1. **ANTONY MURIUKI GACHOKI**, the appellant/applicant before court was tried and convicted by Senior Resident Magistrate at Gichugu Law Courts for the offence of assault causing actual bodily harm contrary to **Section 251** of the **Penal Code** in Gichugu **Principal Magistrate's Court Criminal Case No. 75 of 2014**. He was sentenced to serve 2 years imprisonment for the said offence. He was dissatisfied with both the conviction and the sentence and preferred an appeal that is now pending before this Court.
2. The applicant has now moved this Court vide a Notice of Motion dated 4th April, 2016 for bond pending appeal on the following grounds namely:
 - i. ***That his appeal has overwhelming chances of success.***
 - ii. ***That he is likely to serve substantial part of his sentence or even complete it before his entire appeal is heard and determined.***
 - iii. ***That he is willing to abide by any such bail terms that this court may set.***
3. In his supporting affidavit sworn on 4th April, 2016 and written submissions, the appellant has contended that his appeal has high chances of success and pointed out an inconsistency on the prosecution case at the trial which he contends was not taken into consideration by the trial court. In his contention, the trial court erred by not considering the fact that while the complainant (P.W.1) complained of being hit by a large piece of wood/stick, the medical officer testified that a sharp object was used in the assault.
4. The applicant has also submitted that the sentence met out against him was harsh and excessive given that he was a first offender. In his view he deserved a non-custodial sentence and hence the chances of success in the appeal pending.
5. The Respondent through Mr. Sitati learned counsel for State did not oppose the application and agreed with the sentiments expressed by the applicant.
6. This court has considered the application and the grounds upon which it is relied. It is to be noted that bail pending appeal is granted only in rare and exceptional circumstances owing to the fact an

applicant in such cases has already been found guilty and convicted by a competent court. In the case of **ISSACK TULICHA GUYO -VS- REPUBLIC [2011] eKLR** the Court of Appeal sitting in Nairobi made the following observations:

“The court has to bear in mind that a person who has been convicted by a competent court has lost the presumption of innocence conferred on him by the Constitution and that during the hearing of the pending appeal, the burden would be on the convicted person to show that conviction was wrong. It is not therefore surprising that it has been stated time and again that bail pending appeal will only be granted in rare and exceptional circumstances.”

7. The principles upon which this Court may grant bond/bail pending appeal have been highlighted before in the case of **JIVRAR SHAH -VS- REPUBLIC [1986] KLR 605** where the following set criteria was set out.
 - i. ***Existence of exceptional or unusual circumstances upon which an appellate court can fairly conclude that it is in the best interest of justice to grant bail.***
 - ii. ***Where it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that in addition the sentence or substantial part of it will have been served by the time the appeal is heard.***
8. I have considered the petition of appeal filed, the proceedings and the judgment of the lower court. I am satisfied, applying the above criteria, that the appellant’s contention his chances of appeal particularly on the ground of sentence is arguable and there is a basis in my considered view to exercise my discretion in favour of the application. The applicant was sentenced to serve 2 years imprisonment and may serve his sentence before the appeal pending herein is determined. The application besides being unopposed is merited and the same is allowed. The Appellant may be released on a bond of Kshs.50,000/= with one surety of a similar amount or alternatively cash bail of Kshs.30,000/= pending the hearing and determination of the appeal herein.

Dated and delivered at Kerugoya this 3rd day of May, 2016.

R. K. LIMO

JUDGE

3.5.2016

Before Hon. Justice R. Limo J.,

State Counsel Sitati

Court Assistant Willy Mwangi

Appellant present

Interpretation English-Kikuyu

Antony Muriuki Gachoki present inperson

Sitati for State present

COURT: Ruling signed, dated and delivered in the open court in the presence of Antony Muriuki Gachoki, appellant appearing in person and Sitati for State.

R. K. LIMO

JUDGE

3.5.2016