



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 44 OF 2016

CYRUS SHIRAMA NYARATSO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application for bail pending appeal from the original conviction and sentence in Criminal Case No. 800 of 2013 Republic v Cyrus Shirama Nyaratso in the Chief Magistrates' Court at Eldoret by T. W. Cherere, Chief Magistrate dated 10th March 2016)

RULING

1. The appellant was convicted on two counts of malicious damage to property contrary to section 339 of the Penal Code; and, stealing contrary to section 275 of the Penal Code. He was sentenced to three years imprisonment on the first count; and, ten months imprisonment on the second. The sentences were to run concurrently.
2. The particulars of the first count were that on 21st January 2013 at Lukusi Village, Chekalini Location, Lugari District of the Western Province, he willfully and unlawfully demolished a dwelling house valued at Kshs 68,000, the property of Elizabeth Cherotich. The particulars of the second count were that on the same date at the same place, he stole 18 iron sheets valued at Ksh 40,000 belonging to Elizabeth Cherotich.
3. The appellant has preferred an appeal. The petition of appeal was filed on 23rd March 2016 and raises eight grounds. Pending the hearing and determination of the appeal, the appellant has presented a notice of motion dated 4th April 2016 praying for bail. It is supported by a deposition sworn by the appellant on even date.
4. In a synopsis, the appellant contends that the appeal has overwhelming chances of success. The appellant's learned counsel submitted that the appellant was admitted to bail in the lower court; and, that he will abide by any conditions set by this court. It was further submitted that unless bail is granted, the appellant will have served the whole or a substantial part of the sentence. In a synopsis, learned counsel submitted that there are exceptional circumstances to warrant grant of bail.
5. The legal parameters in an application of this nature were well stated by the Court of Appeal in *Jivraj Shah v Republic* [1986] KLR 605-

“If 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 the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision is Somo v Republic [1972] EA 476 which was referred to by this court with approval in Criminal Application No. NAI 14 of 1986, Daniel Dominic Karanja v Republic where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed.”

6. The learned State Counsel did not contest the motion. It would be prejudicial to comment about the merits of the present appeal or the veracity of the evidence presented at the trial. I would be pre-empting the hearing of the appeal. However, I note that there was no eye witness account. The learned trial magistrate found a nexus between the demolition and the three iron sheets recovered from the appellant. On the face of it, the appeal is arguable. This is not to say the appeal will succeed; only that it has a fair chance of success. The State concedes as much.

7. The appellant was sentenced to three years jail term on the first count; and, *ten months* imprisonment on the second. It will be for the appellate court to determine whether the sentences were justified. I however find that the *whole* or a *substantial* part of the sentence, particularly on the *second count*, will have been served by the time this appeal is heard and determined. I have also taken into account that the appellant had been admitted to bail in the lower court; and, that he faithfully attended his trial.

8. The upshot is that the application for admission to bail pending appeal is allowed. The appellant shall be released upon execution of a bond in the sum of Kshs 100,000 (one hundred thousand only) together with *one* surety of a similar amount. The surety shall be approved by the Deputy Registrar of this Court.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 10th day of May 2016.

GEORGE KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of

Appellant.

Mr. Chepkwony for the appellant.

Ms. B. Oduor for the Republic.

Mr. J. Kemboi, Court Clerk.