



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO 49 OF 2015

SOSPETER MUCHANGI NDWIGAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant has appealed against his conviction and sentence of fifteen years (15) imprisonment in respect of a charge of defilement imposed upon upon him on 23rd April 2015 by the court of the Principal Magistrate at Runyenjes. During the pendency of the appeal the applicant has applied for bail pending the hearing and determination of his appeal.
2. He has attached a supporting affidavit in respect of his bail pending appeal in that affidavit which was filed in court on 11th august 2015. In that affidavit the applicant has stated he was sentenced to 15 years imprisonment in respect of the offence of defilement. He has also stated that he would like the court to grant him bail pending the hearing and determination of his appeal (paragraph 3).
3. Furthermore, it is his affidavit evidence that he will abide and honour all orders that the court may deem fit to impose. And finally he has stated that his appeal has high chances of success.
4. In his submissions in court he handed in a written submission dated 25th January, 2016. In his written submissions, the applicant has stated that he has a convulsive condition which forced him to be admitted in hospital, a condition which affects his mental status. Additionally, he submitted that he has no guardian who is financially stable and he also says he embarked on an exercise of self learning in matters of communication and technology.
5. As regards his family status, the applicant states that he is a member of the late David Ndwiga Koru, who died sometimes back. He has further submitted that there is an ongoing succession cause in court concerning his father's estate. He has also submitted that he would like to be released on bail pending the hearing and determination of his appeal in order to assist his mother to prosecute the succession cause.
6. Finally, he has submitted that he started a computer shop with the aid of a friend. He also says that he took a friendly loan to assist him in his business.
7. Ms Mbae for the state has opposed his release on bail. According to her there are adequate medical facilities in prison to cater for the illness of the applicant. In this regard, I must point out that there was a report from the prison dispensary in which they have stated that the applicant's condition will be accommodated without experiencing any complications. Furthermore, she also submitted that the medical condition of the applicant does not constitute exceptional circumstances to warrant his release. In respect of the appeal having chances of success, Ms Mbae has submitted that the applicant has failed to demonstrate that his appeal has high chances of success.
8. I have considered the affidavit evidence of the appellant and his written submissions. I find that he has a convulsive medical condition which at times necessitates his admission in hospital. The prison authorities have stated that they have adequate facilities to take care of the applicant as a

- patient prisoner. I find that this does not constitute an exception circumstances to warrant his release on bail.
9. I accept as good law the principle pronounced in the *High Court of Kenya at Meru in Munjia Michubu V. R., Criminal Appeal No. 100 of 2013*. According to that case an applicant for bail pending appeal has to demonstrate that there are overwhelming chances of success in his appeal. Amongst the other cases cited therein is *Somo V. R. (1972) EA 476*, which also stands for the sound legal proposition that an applicant for bail pending appeal must demonstrate that his appeal has overwhelming chances of success or there are exceptional or unusual circumstances in his appeal.
 10. The applicant has failed to demonstrate that his appeal has high chances of success. The applicant's convulsive medical condition, his being without a guardian who is financially stable and the fact that he has also embarked on an exercise of self learning in matters of communication and technology and that his release will assist his mother to prosecute the succession cause in court are not exceptional or unusual circumstances. He has therefore failed to demonstrate that his appeal has exceptional or unusual circumstances.
 11. In the circumstances, the applicant's application for bail pending the hearing and determination of his appeal is hereby dismissed.

RULING DELIVERED, DATED and SIGNED in open court at **EMBU** this **4th** day of **MAY 2016**.

In the presence of the applicant and Ms Mbae for the State

Court clerk Njue

J.M. BWONWONGA

JUDGE

04.05.16