

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 185 OF 2011

FRANCIS MWANIKI MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The appellant was charged with the offence of preparing to commit a felony contrary to **section 308 (1)** of the **Penal Code** in the **Principal Magistrate’s Court at Karatina, Criminal Case No. 637 of 2011**. He was convicted on his own plea of guilty and sentenced to serve seven years imprisonment.

Despite having pleaded guilty, the appellant appealed against conviction and sentence; in the meantime, he has filed a notice of motion dated 16th July, 2013 seeking to be released on bond pending the hearing and determination of his appeal.

At the hearing of the motion, the appellant confirmed that he pleaded guilty to the charge but urged the court to consider reducing the sentence meted out against him.

Mr Njue for the state opposed the application for bail because, in his view, there is no chance that the appellant’s appeal will succeed at all. As far as the sentence is concerned, the learned counsel for the state indicated that the sentence meted out by the learned magistrate was the minimum sentence the law provides and therefore there is no basis for altering it.

The appellant does not appear to fault the learned magistrate for his conviction; all I understand to be seeking from this court is leniency and to that extent he has urged this court to reduce his imprisonment term. Unfortunately for the appellant, bail pending appeal can only be granted where the appeal has overwhelming chances of success. Where his plea to the charge was unequivocal and was sentenced in accordance with the law and neither his trial can be faulted in any way, there is no chance that the appeal will succeed.

The sentence the applicant is asking this court to reconsider is the mandatory minimum sentence that the court could possibly impose and thus cannot be interfered with; **section 308** of the **Penal Code** under which the applicant was charged and in which the sentence is prescribed states as follows:-

308. Preparations to commit felony

(1) Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years.

I find that there is absolutely no merit in the applicant’s application. It is hereby dismissed.

Signed, dated and delivered in open court this 6th day of March, 2015

Ngaah Jairus

JUDGE