

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.263 OF 2014

JAMES NDUNGU KAMURA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, James Ndungu Kamura, together with others, was charged with the offence of **severing electric wires** with the intent to steal contrary to **Section 64A** of the **Energy Act**. The particulars of the offence were that on 16th March 2013 at Mara Road, Upperhill area in Nairobi County, the Applicant, jointly with others severed a 300mm forko alluminium underground cable valued at Kshs.1 million, the property of Kenya Power & Lighting Limited. The Applicant pleaded not guilty to the charge. After full trial, the Applicant was found guilty as charged and was sentenced to serve ten (10) years imprisonment. The Applicant was aggrieved by his conviction and sentence. He has filed an appeal to this court.

Pending the hearing and determination of the appeal, the Applicant filed an application to be released on bail pending appeal. The Applicant argued that his appeal had overwhelming chances of success because, in his view, no evidence had been adduced by the prosecution to connect him with the commission of the offence. He further stated that there was evidence that other persons, other than himself, could have severed the electric wires and therefore the trial court ought to have found that there was reasonable doubt in the prosecution's case. The Applicant further stated that if he were to be released on bail pending trial, the court should not impose onerous bond terms because he was a man of straw. The application is opposed. Ms. Ndombi for the State submitted that the prosecution had adduced sufficient evidence to sustain the charge. She stated that the Applicant was found in the act and therefore the chance that his appeal will succeed was remote. She further submitted that the sentence that was meted out on the Applicant was legal. She urged the court to dismiss the application as it lacks merit.

This court has carefully considered the rival arguments made by counsel for the parties before this court. The issue for determination by this court is whether the Applicant made a case for this court to grant him bail pending appeal. That this court has jurisdiction to grant such bail is not in doubt. The Applicant is required to establish to the satisfaction of the court that he has an appeal with overwhelming chances of success. The Applicant is further required to establish existence of exceptional or unusual circumstances that will persuade this court to rule in his favour. In the present application, having perused the proceedings and the judgment of the trial court, and further, having read the grounds put forward in the petition of appeal, this court is unable to agree with the Applicant that, *prima facie*, before the actual hearing of the appeal, that the Applicant's appeal has overwhelming chances of success.

From the evidence adduced before the trial court, it was apparent that the Applicant was found having severed an electric alluminium underground cable, the property of the complainant. Although the Applicant put forward his defence that he was not actually found in the act of severing the cable, this court is unable to agree with him that the evidence adduced by the prosecution was not sufficient to sustain his conviction. The Applicant did not put forward any unusual or exceptional circumstances that would persuade this court to find in his favour. As regard sentence, the Applicant may have a case when he states that the sentence that was imposed on him was harsh and excessive. However, that issue can only be addressed in the actual appeal and not in an application for bail pending appeal.

For the above reason, the application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 10TH DAY OF MARCH 2015

L. KIMARU

JUDGE