

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 143 OF 2014

WENDO, J

STANLEY MICHUBU ISAACK.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

RULING

By the Notice of Motion dated 14.1.2015, the appellant, Stanley Michubu Isaack prays that the court do release him on bond/bail pending the hearing of his appeal. The application is supported by his affidavit sworn on 10.11.2014. The applicant was charged with the offence of grievous harm before the Principal Magistrate's Court, Maua. He was convicted of the charge and sentenced to serve 10 years imprisonment. He has preferred an appeal against both conviction and sentence. In the meantime, the appellant filed this application to be released on bond pending the hearing of the appeal for reasons that his appeal has high chances of success and secondly, that if he is not released on bond, he is likely to serve a substantial part of the sentence which is prejudicial to him. On the ground that the appeal has overwhelming chances of success, Mr. Kimathi, counsel for the applicant, urged that the conviction was based on the evidence of one witness without any corroboration despite the fact that the offence was committed at night. Counsel also submitted that the applicant had been on bail in the trial court and attended court faithfully. Mr. Mulochi, learned counsel for the State opposed the application urging that the applicant has not demonstrated that the appeal has high chances of success and all that the applicant should be given is an early hearing date so that the appeal can be heard at once.

Once a person is convicted of an offence, he is presumed to have been properly convicted and sentenced. See **Mutinda V. Republic (1986) KLR 623**. That is why the primary consideration in an application for bail pending appeal is whether the appeal has high chances of success and the onus rests on the applicant to demonstrate that he is entitled to be released on bail.

The main reason why the applicant contends that there is overwhelming chances of success is because the conviction is based on the evidence of a single identifying witness at night without any corroboration. I have perused the proceedings before the lower court and the judgment of the court and in my view, I cannot conclude that the appeal has overwhelming chances of success. The arguments that the applicant is making are what should be made at the hearing of the appeal for determination on merit. The trial court made findings which have to be considered by this court at the hearing.

As to whether the applicant might serve a substantial part of the sentence before the appeal is heard, I do not believe so. He was sentenced to 10 years imprisonment on 27.2.2014. The proceedings are already typed and it remains for the applicant to prepare the record of appeal, have the appeal admitted to hearing and dates be taken. So far, the appellant has only served 4 months and is unlikely to serve a substantial part of the 10 years. In the end, I find that the application lacks merit. Let the applicant prepare the record of appeal, have appeal admitted and set down for hearing. It is so ordered.

DATED AT MERU THIS 6th DAY OF MARCH 2015.

R. P. V. WENDOH

JUDGE.

M/S Nelima for appellant

Mr. Mungai for State

Jane/Kirimi Court Assistant

Appellant present.

R. P. V. WENDOH

JUDGE.