



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL CASE NO. 8 OF 2015

BONFACE ROTICH MONOO APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

1. The appellant herein **BONFACE ROTICH MONOO** was convicted and sentenced for the offence of assault causing bodily harm contrary to Section 251 of the Penal Code. He was aggrieved by the judgment and preferred this appeal on several grounds.
2. The notice of motion brought pursuant to Section 350 of the Criminal Procedure Code seeks release on bail pending hearing and determination of appeal on grounds that the appeal will be rendered nugatory as the applicant is likely to serve the sentence or a fraction of the same by the time the appeal is heard.
3. In arguing the application Mr. Mukisu for the applicant added that the appeal has a high chance of success and the applicant is not likely to abscond as he was on bail previously.
4. Mr. Oimbo for the State opposed the application. He filed grounds of opposition to the effect that bail pending appeal was not a constitutional right, applicant's presumption of innocence has fallen and the applicant does not have an overwhelming chance of success.
5. I have considered the rival submissions by counsel on record. So as not to prejudice the appeal I will not comment on whether there is an overwhelming chance of success or not but will safely say that this is an arguable appeal. In arriving at this ruling I am guided by the following decisions.

Dominic Karanja vs. Republic 1986 [KLR] at page 612 where the Court of Appeal stated inter alia

1. ***"The most important issue was that if the appeal had such overwhelming chances of success there is no justification for depriving the appellant his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.***
2. ***The previous good character and the hardships, if any facing the family were not exceptional or unusual factors. His health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.***
3. ***A solemn assertion by an applicant that he will not abscond if released even if it is supported by surerities is not sufficient ground for releasing a convicted person on bail pending appeal....."***

In *Abdi vs. Republic [1991] KLR at 171* the court held inter alia,

1. ***“An application for bail pending appeal is to be granted in rare and exceptional circumstances.***
2. ***To admit an applicant to bail is the decision of the court which must be judicially exercised keeping in sight all the facts relating to the application, all the matter material to the trial at the lower court, the grounds submitted in the petition and the chances of success and the nature of the trial. The time it would take for the appeal to be prosecuted and determined is by itself not a sufficient ground.”***
6. The applicant by virtue of the sentence meted out lost the presumption of innocence. He has a sentence hanging over his head and the consideration for the bond is different from consideration for one awaiting trial.

The applicant cited 3 reasons

- Health
 - Overwhelming chances of success
 - Willingness to abide by terms of bond.
7. From the above cited authorities the above 3 reasons do not qualify an admission to bail. The prison has medical facilities and in cases of extreme need prisoners are availed health facilities in other institutions. Second it cannot be said that one can deduce from the grounds a clear chance of success, this is a matter that will be argued at some stage for the courts determination. Thirdly there are no exceptional circumstances demonstrated. Guided by the authorities cited above this application must fail. It is therefore dismissed.

Dated at Bungoma this 12th day of May 2015.

ALI-ARONI

JUDGE.