



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL NO. 140 OF 2014

[Arising from the judgment by Chief Magistrate R. Ngetich in Bungoma CMCR case no. 918 of 2013]

JAIRUS JOSEPH EPONG APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. Application before court is dated 3rd March 2015 brought pursuant to Section 357 of the Criminal Procedure Code and Article 540 1 (e) of the Constitution seeking for bail pending appeal on grounds that the appeal has an overwhelming chance of success; there are exceptional or unusual circumstances raised, the applicant had been placed on bail before at trial and he suffers from Tuberculosis and requires specialist treatment
2. The application was opposed by the State. Grounds of opposition were filed as follows, the application is not meritorious; the appeal has no overwhelming chances of success, no demonstration that the appeal is likely to delay and there are medical facilities within the prison.
3. I have considered the rival submissions argued before the court and the issue for determination is whether or not to admit the appellant on bond before hearing and determination of the appeal. Section 357 of the Criminal Procedure Code allows the applicant to make this application either to the Lower Court or the High Court. There are several authorities on this issues and principles are well stated. I will later in this ruling refer to the same. Section 50 (1) (e) of the Constitution gives the accused person the right to a fair hearing which includes to have the trial begin and concluded without unreasonable delay.
4. It is to be noted that the trial herein was concluded. What is pending is the appeal and there has been no demonstration that there is likelihood of the same being delayed if all matters remain constant Counsel for the appellant is yet to file a record of appeal which will in essence allow progression of this matter. That as it may.
5. This is definitely an arguable appeal and merits or otherwise the same will be determined at the hearing. Having said so I will consider the well set out principles of when to grant bail pending appeal.

In the case of *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 applied for one awaiting trial.

The applicant cited 4 reasons

- Health
 - Overwhelming chances of success
 - Willingness to abide by terms of bond.
 - Likely delay of the appeal
7. From the above cited authorities the above 4 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 court’s determination. Thirdly there are no exceptional circumstances demonstrated neither likelihood of delay. 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.