



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 9 OF 2015

JOHN MWANGI KIBUCHIAPPELLANT

-VERSUS-

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case Number 175 of 2015 in the Chief Magistrate's Court at Kerugoya – Hon. K.K. Cheruiyot P.M.)

RULING

1. Before this Court is a Notice of Motion dated 8th April, 201 brought by JOHN MWANGI KIBUCHI the appellant herein asking this Court to admit him to bail pending the hearing and determination of this appeal.
2. The grounds given by the applicant are as follows:
 - a. **That he was convicted and sentenced on 24th March,2015 to serve 2 years imprisonment without an option of fine at the lower Court.**
 - b. **That his appeal has high chance of success.**
 - c. **That he is a breadwinner and likely to lose his job if he is not admitted to bail.**
 - d. **That he is likely to serve a substantial part of his sentence by the time this appeal is heard and determined rendering it nugatory.**
3. The applicant supported the above grounds with a supporting affidavit sworn on 8th April, 2015 and a further affidavit sworn on 28th April, 2015. The same were backed up with submissions made by Mr. Ngigi, the appellant's counsel who argued that the appellant was charged at the trial with assault causing bodily harm contrary to **Section 251** against his wife and that he admitted the offence but being a first offender he deserved a non-custodial sentence and a chance to reform his life.
4. It was further contended that the applicant and the complainant quarrelled over domestic issues which had been taken to a village group known as "**Kumi**" "**Kumi**" with a view to resolving but it would appear that the same was in vain. The main cause for the assault was what the appellant thought was his wife's character of "**misbehaving**" whatever that meant. He submitted that he works in a neighbouring school as a watchman and was likely to lose his job unless he was admitted to bail pending his appeal.
5. Mr. Sitati for the respondent opposed the application citing **Section 348 of the Criminal Procedure Code** saying that the chances of appeal were slim as the appellant pleaded guilty to the charge. He argued that the appeal would have a chance in circumstances only;
 - i. **If the plea taken was equivocal.**

- ii. **When a relevant law has been contravened.**
- iii. **When the rights of the accused person has been denied.**

6. The State argued that the plea taken at the trial Court was unequivocal and the appellant was convicted and sentenced as a result of plea of guilty made by him. Mr. Sitati further submitted that the issue of sentence was discretionary and the appellant did not have a right to non-custodial sentence. He further contended that the trial Court was competent to hand a sentence deemed fit in the circumstances.
7. This Court has looked at the application and both arguments advanced by the applicant and the respondent. The nature of the charge for which the appellant was convicted is not in dispute and so to the sentence meted out on a plea of guilty by the appellant. The only point of contention is whether or not the appellant should be admitted to bail.
8. The guiding principle in the application of this nature was set in the Court of Appeal's case of **DOMINIC KARANJA VS REPUBLIC (1986) K.L.R 612** and the case of **JIRVAJ SHAL VS REPUBLIC (1986) K.L.R** where Court laid down the following criteria:-
 - a. **The existence of exceptional or unusual circumstances upon which an appellate Court can fairly conclude that it is in the best interest of justice to grant bail,**
 - b. **When it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law and that a substantial part of the sentence will have been served by the time the appeal is heard.**
 - c. **Previous good character of the applicant and the hardship if any facing a convict are not exceptional or unusual factors neither is a solemn assertion that an applicant will not abscond if released on bond sufficient ground to release a convicted person on bail.**
9. I have considered all the circumstances surrounding the case against the appellant at the trial and by applying the above principles, I am satisfied that without going into details of the merit of the above for obvious reasons, that the applicant has satisfied the first two criterias set out by the above authorities.
10. The appellant is the husband to the complainant and from the brief fact on the record, it does appear to me given the nature of the offence that there exists exceptional circumstances that points out that it would be in the best interest of justice to grant the appellant bail at this stage.
11. I am also satisfied that the appellant does have a prima facie point to hold that he may be successful in his appeal and from the nature of the sentence meted out again, there is basis in his argument that he may serve substantial part or all the term of the sentence before the appeal is concluded.
12. In view of the above, I do find merit in the application before me. The appellant may be released on a bond of Ksh. 50,000/(fifty thousand) with a surety or a cash bail of 10,000/.

R.K. LIMO

JUDGE

5/5/2015

5/5/201

Before

Hon. Justice R. Limo

State Counsel - State

CC – Willy

Appellant – absent

Sitati for State present

Mr. Ngigi absent for the Appellant

Later

Miss Kiragu holding brief for Ngigi

COURT: Ruling signed, dated and delivered in the open Court in the presence of Miss Kiragu holding brief for Ngigi for Appellant and Sitati for State.

R.K. LIMO

JUDGE

5/5/2015