



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO. 533 OF 2013**

**WALTER MUGAYA NGOTI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant herein together with one Stephen Nderi and one Francis Mbugua were charged with two counts of the offence of robbery with violence contrary to **section 296(2) of the Penal Code**. In a judgment delivered by the learned magistrate on 13<sup>th</sup> November, 2013, the three accused persons were convicted on both counts and were sentenced to death.

On 26<sup>th</sup> November, 2013, the three convicts filed separate appeals against the decision of the learned magistrate and along with their appeals they also filed motions in which they sought from these court orders to be admitted to bail pending the hearing and determination of their appeals.

Perhaps because the appellants were tried and convicted together, the learned counsel for the appellants orally applied and sought to have the appeals consolidated for purposes of determining the applications; the court allowed this application and accordingly, High Court Criminal Appeal Cases Nos. 533 of 2013, 534 of 103 and 535 of 2013 were consolidated for that purpose. High Court Criminal Appeal No. 533 of 2013 in which the application herein was made was adopted as the control or lead file.

When the applications came up for hearing on 30<sup>th</sup> January, 2013, Mr Kebongo for the appellants argued that the appeal has overwhelming chances of success because, amongst other grounds, the evidence on record did not support the offences with which the appellants were charged. In the main, counsel argued that the complainants were attacked by a mob and it was not clear from the evidence whether the accused persons were part of this mob and what role, if any, each of them played.

Again the appellant's counsel argued that crucial witnesses who are alleged to have witnessed the attack including a police officer were never called to testify and those who testified contradicted themselves.

Counsel for the state Mr Njeru, conceded to the applications and doubted whether the charges against the appellants were the appropriate charges which should have been instituted against the appellants; in his view, considering the circumstances under which the complainants were attacked, the appellants should have been charged with the offences related to the breach of the peace rather than robbery with violence offences.

I have considered the applications and the respective counsel's submissions; it appears to me that the appellants have raised several substantial points of law whose determination may very well support the grounds upon which their appeals are based. The appeal itself is yet to be heard and therefore it would be premature to make any conclusive remarks on its fate at this stage. For purposes of determination of this application, all I can say is that in view of the questions that have been raised, the appeal is likely to succeed if those questions will be resolved in favour of the appellants. For this reason I allow the applicants' applications dated 26<sup>th</sup> November, 2013 and therefore each one of them will be admitted to bail pending the hearing and determination of their appeals on the following conditions:-

1. Each of the appellants shall execute a bond of Kshs. 2 Million with two sureties of the like sum.

2. Each of the appellants shall report to the deputy registrar, High Court Murang'a, once every month until their appeals have been determined.
3. None of the appellants shall leave the jurisdiction of this honourable court without the court's prior permission.

For avoidance of doubt this order shall be adopted in High Court Criminal Appeal Cases Nos. 534 of 2013 and 535 of 2013.

**Signed, dated and delivered in open court this 7<sup>th</sup> day of March, 2014**

**Ngaah Jairus**

**JUDGE**