



IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEALS NOS 115 AND 116 OF 2014

1. NAHASHON NG'ANG'A

2. PETER IRERI.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Appellants were jointly charged with, tried for and convicted of **causing grievous harm to a person** contrary to **section 234** of the **Penal Code**. They were each sentenced to serve 12 years imprisonment. They filed their petitions of appeal themselves. Those petitions clearly show that they have appealed against sentence only. I have not seen in the court files any amended petitions of appeal showing that the Appellants wish to appeal against both conviction and sentence.

2. The Appellants subsequently appointed counsel who applied by **chamber summons dated 8<sup>th</sup> October 2014** for their release on bail pending disposal of their appeals. That application is the subject of this ruling.

3. As already pointed out the Appellants were convicted after trial. Again as already pointed out, they have appealed against sentence only. It has not been alleged that the sentences meted out to them is illegal; the offence carries a maximum of life imprisonment. They can hardly apply for bail pending appeal in these circumstances

4. In view of the fact that the Appellants' learned counsel argued the application upon the basis that the convictions are challenged, I will consider the merits of the application. In this regard I have considered the submissions of the learned counsel and the authorities he relied upon as well as those of learned State Counsel for the Respondent. I have also perused the evidence laid before trial court as well as its judgment.

5. The authorities cited are to the effect that for an appellant to be admitted to bail pending appeal an appeal must have overwhelming chances of success, such that there would be no justification for depriving the appellant of his liberty pending disposal of the appeal. In the case of **Shah -vs- Republic (1968) KLR 605** the **Court of Appeal** said

**“If 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 to be urged and the sentence or substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist.”**

6. Another consideration in an application for bail pending appeal is whether there exist exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail. See the same case.

7. Learned counsel for the Appellants did not urge any point of law, substantial or otherwise, in challenging the convictions. His submissions were based solely on alleged inconsistencies in the evidence before the trial court. Learned State Counsel replied that such inconsistencies as could be found in the testimonies of the witnesses were minor and did not go to the root of the convictions.

**8.** I cannot in this ruling analyze and evaluate the evidence in-depth without prejudicing hearing of the appeals. Suffice it to say that having perused the testimonies of the witnesses, it is unlikely that the convictions of the Appellants could be properly faulted upon insufficiency or inconsistency of the evidence laid before the trial court. I am not persuaded, assuming the Appellants will challenge their convictions by amended petitions of the appeal, that those convictions are unlikely to be sustained upon the basis of the evidence laid before the trial court. I would thus reject the application for bail based upon the challenge to the convictions.

**9.** Learned counsel for the Appellants also urged the application for bail upon the basis that there exist exceptional or unusual circumstances. Those exceptional or unusual circumstances were said to be that the Appellants are father and son, and that they are the sole bread-winners of their nuclear and extended families. Those are hardly exceptional or unusual circumstances. Able-bodied men are usually the bread-winners of their families. It was also urged that the 1<sup>st</sup> Appellant suffers from stomach ulcers, thus needing a special diet which cannot be found in prison and that therefore the prison diet is negatively affecting his health. There is no medical report provided to support this claim. In any event, that is a matter that can probably be resolved by the prison authorities.

**10.** Having considered the application in light of the evidence laid before the trial court and the submissions of the learned counsels, I am not persuaded that this is a suitable case to release the Appellants on bail pending disposal of their appeals. The application is dismissed. It is so ordered.

**DATED SIGNED AND DELIVERED AT MURANG'A THIS 5TH DAY OF DECEMBER 2014**

**H.P.G.WAWERU**

**JUDGE**