



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 128 OF 2013

RASHID MOHAMMED BULEE ACCUSED/APPLICANT

VERSUS

REPUBLIC

(Being an appeal from the conviction and sentence of Hon. S.K. Mutai Ag. Principal Magistrate delivered on 31/5/2013 in Mutomo Senior Resident Magistrate Criminal Case No. 56 of 2013)

(Before Hon. B. Thurairaja J)

RULING

1. The Appellant/Applicant was on 31/4/2013 convicted for the offence of robbery with violence contrary to section 296 (2) of the Penal Code and sentenced to life imprisonment.
2. In an application filed in court on 1/7/2013, the Appellant appealed for both pending the hearing of the appeal.
3. The application is premised on the grounds that the appeal has overwhelming chances of success. The charge sheet was faulted as being defective and the evidence of the prosecution witnesses termed as inconsistent and contradictory.
4. It was further argued that the Appellant is an Islamic cleric who is well known in his community and will abide by the terms of bond.
5. The application was opposed by the State. It was submitted that the appeal has no chances of success and that no special circumstances have been shown to exist. It was further argued that the Appellant has been convicted and may have the incentive to abscond due to the severity of the sentence imposed.
6. Bail pending appeal is generally a matter of the court's discretion. There is no Constitutional requirement to grant bail pending appeal. Indeed, the presumption is one of validity of the conviction and sentence imposed. **See Isaac Tulicha Guyo –vs- Republic (Criminal App. No. 16 of 2010).**
7. The most important consideration in granting the orders sought herein is whether the appeal has overwhelming chances of success such that there is no justification of depriving the Applicant his liberty. The court can also consider if there is the existence of any exceptional or unusual circumstances (**See Dominic Karanja –vs- Republic 1986 (KLR) 612.**)
8. Having carefully considered the facts of this application, I am unable to comment on the claim that the appeal has high chances of success. There is nothing in the petition of appeal that points to the likelihood that the appeal herein is likely to succeed. This court is yet to hear the submissions on the actual appeal. No unusual or exceptional circumstances have been demonstrated to exist in this case.

9. In the premises therefore, the Appellant's application has no merits and is dismissed.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 8th day of October 2013.

B. THURANIRA JADEN

JUDGE