

NICASIO MUCHUNGU MWANIKI ACCUSED/APPLICANT

VERSUS

REPUBLIC DIRECTOR OF PUBLIC PROSECUTION/RESPONDENTS

R U L I N G

Before me is an application for bail pending appeal dated 28th March 2012, filed by Nicasio Muchungu Mwaniki. The application is strongly opposed by the Director of Public Prosecutions. The counsel for the parties, Anne Kiusya & Company for the applicant and Mr Mukofu Naylor, State Counsel for the Director of Public Prosecutions, filed written submissions which they relied upon.

The applicant was convicted of manslaughter contrary to Section 202 (1) of the Penal Code and sentenced on 18th February 2011 to serve five (5) years imprisonment. He has now appealed to this court, and has also made this application for bail pending appeal.

A person who is convicted is presumed to be properly convicted and liable to serve sentence. He can only be released on bail pending appeal, if his appeal has overwhelming chances of success, or there are unusual or exceptional circumstances relating to the matter. In **Dominic Karanja –vs- Republic (1986) KLR 612** the Court of Appeal stated:-

“The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant consideration would be whether there were exceptional or unusual circumstances.”

In the judgment being challenged on appeal, the learned magistrate stated:

“The incident having happened at Kenol area, the accused could have easily taken the victim to Kangundo or Machakos District hospitals which are not more than 30 kilometers apart. The accused went to Nairobi which is 60 kilometers away then returned again to Kangundo. The accused has not given any explanation or justification as to why he did not take the victim to the nearest hospital that very morning. Though he might not have intended to have him die or thought that the victim would die the delay occasioned by the accused ultimately led to the death of Muthiani.”

Considering the above, I am of the view that the appeal especially on the element of sentence has overwhelming chances of success. It is not that I am determining the appeal, but merely stating that the appeal with regard to sentence has overwhelming chances of success. I find no reason to deprive the applicant of his freedom and detaining him in custody further since the prison sentence is relatively short.

The applicant shall therefore be released on a bond pending appeal of Kshs.200,000/= with one surety of like sum.

Dated and delivered at Machakos this 3rd day of July 2012.

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George Dulu

Judge

In the presence of:

Court clerk – Nyalo

N/A for State
Appellant/Applicant in person