



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISCELLANEOUS CRIMINAL APPEAL 160 OF 2011

HEWET VOSENA KESUSA APPELLANT

=VERSUS=

REPUBLIC PROSECUTOR

RULING

Hewet Vosena Kesusa, the applicant, has lodged this Motion on Notice seeking to be released on bail pending the hearing and determination of his appeal. The grounds for the application are that his appeal has overwhelming chances of success; that he is ailing in jail and that he will suffer irreparable loss if he is not released. The application is supported by an affidavit sworn by his counsel, Sylvester O. Madialo, which affidavit elaborates the said grounds.

At the hearing of the application, Ms Chepkurui, learned counsel who represented the applicant, reiterated the above grounds emphasizing that the appellant was not positively identified and his appeal has high chances of succeeding. Mr. Chirchir, Learned Senior State Counsel, conceded the application on the ground that the applicant's appeal indeed has overwhelming chances of success as his identification as one of the assailants was not positive.

We have considered the application, the supporting affidavit and the submissions of counsel. We have further given due consideration to the record of the Lower Court. Having done so, we indeed entertain doubt as to whether the applicant was positively identified. The applicant has therefore demonstrated that his appeal has high chances of success. It is settled that the important issue to be considered in an application for bail pending appeal is whether the appeal has overwhelming chances of success (See **Dominic Karanja =vrs= Republic [1986] K.L.R. 612.**)

There is therefore no justification for denying the applicant bail pending his appeal. That being our view of the matter, the application dated 1st December, 2011 and lodged on 23rd December, 2011 is allowed in terms of prayer (1) thereof. The applicant may be released on bond of Kshs 300,000/= with one surety of a similar amount pending the hearing and determination of his appeal.

We also admit this appeal to hearing at the earliest opportunity before two judges at this station for one hour. The appellant's counsel to prepare and serve a record of appeal before then.

Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF SEPTEMBER 2012.

F. AZANGALALA

JUDGE

A. MSHILA

JUDGE

Read in the presence of:

F. AZANGALALA

JUDGE