



REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL APPLICATION NOS 116, 117 & 118 OF 1993 (CONSOLIDATED)

JOHN JUMA OGONDO

JULIUS KIBEIT MUTAI

JOSEPH OUMA OLUOCH.....APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

(From Original Intended Appeal from Convictions and sentences of the
District Magistrate's Court at Tamu in Criminal Case No 94 of 1993:

FBA Kosambo, DMI)

RULING

In this consolidated application the applicants seek to be admitted to bail pending the hearing and the determination of their appeals.

The facts giving rise to this application are that the complainant who is a farmer in Songhor area of Kisumu district keeps some livestock on his farm, During the night of 18th/19th March, 1993 at about 2:00 am while the complainant was asleep he heard some people walking outside his house and when he peeped through the window he saw some sport lights going towards his cattle *boma*. He then saw the gate being opened by a person with a torch. He then saw the person with the torch carry away the iron sheet used as the gate and as he did so another man also with a torch emerged and lit the face of the first person. The complainant told the Court that he recognised the first man as Joseph Ouma Oluoch who was his friend. Then he saw the said Ouma go into the *boma* and untie one black cow and then went out of the *boma* to untie its calf and drove the cow and its calf away. It is stated that the complainant then shouted to Ouma to stop what he was doing. The complainant stated that he the saw an arrow shot at him and immediately thereafter saw other three torches lit from all the directions of the house and they began to throw stones at his house. The complainant said he saw a third person through the window as Julius Rongoe and also heard his voice. The complainant also stated that he heard another man shout and threatening him. The complainant stated that while other people were shouting and threatening him stones were being huwled at his house and the nine head of cattle were driven away. Thereafter they tracked the thieves and these animals were recovered.

The complainant gave the names of the three applicants and were later on arrested and charged and were jointly tried. At the end each was convicted. Each of them was thereafter sentenced to 5 years imprisonment with 4 strokes of the cane. Each has appealed to High Court against both his conviction and the sentence and at the same time he has made an application for bail pending the appeal.

The conditions which the Court should consider in an application for bail pending appeal are that there must be exceptional circumstances; that the appeal should not be frivolous and vexatious and that there should be over-whelming chances of success.

Applying those principles to this consolidated application I could exercise my discretion so as to admit each applicant to bail on condition that each executes a bond of Shs 10,000/= with one surety in the like sum.

Dated and Delivered at Kisumu this 4th day of June, 1993

B.K. TANUI

.....

JUDGE