



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS**

Crim Misc Appli 23 of 2006

PAUL KITAKA MASEKIAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant PAUL MASEKI KITAKA filed the Chamber Summons application before me, on 5th April, 2006. He sought two prayers in pertinent as follows:-

1. THAT the applicant be granted bond/bail pending the hearing of this appeal.
2. THAT if the Hon High Court is unable to grant bond/bail the applicant humbly request that the appeal be heard instead.

He argued his application on his own being un-represented. He argued the court to consider that he was sick with ulcers, that he was a businessman and that this appeal had high chances of success.

Mr. O'mirera Learned Counsel for the state opposed the application and submitted that the applicant had failed to demonstrate that his appeal was arguable to warrant the court to give orders sought. Counsel submitted that the prosecution case was water-light and he urged the court to dismiss the application.

I have also considered the filed affidavit sworn by the applicant in support of this application and which is dated 23rd March, 2006. In that affidavit the applicant depones inter-alia , at paragraph 3(iii), as follows:-

“ 3(iii) That, the applicant contends that his criminal appeal No.91/2004 has overwhelming chances of success if heard.”

The cited HCCR.A. No.91/2004 was also before me. I have perused the grounds of appeal filed by the applicant in support of his appeal which he filed earlier. It raises serious issues challenging both the conviction and the fairness of the sentence of 7 years.

I have also caused the trial court file Machakos CMCC No. 2386/03 to be brought before me and I have also perused it.

The charges preferred against the appellant were Robbery Contrary to Section 296(2) of the Penal Code and Possession of Imitation Firearm Contrary to Section 34 (3) of Firearms Act. The appellant was convicted of Robbery Contrary to Section 296 (1) of Penal Code and Possession of

Imitation Firearm contrary to section 34 (3) of Firearms Act and sentenced to 7 years imprisonment in each count to run concurrently.

Bail pending appeal can only be granted if there are exceptional or unusual circumstances. The likelihood of success in the appeal is the most important factor that should be considered in granting bail pending appeal. Serious personal or family difficulties cannot stand on their own to move the court to grant bail. See ADEMBA VRS REPUBLIC 1983 KLR 442 and DOMINIC KARANJA VRS REPUBLIC 1986 KLR 612.

The learned counsel for the state has submitted that the applicant failed to demonstrate an arguable appeal. That alone would not warrant the court to fail to satisfy itself whether indeed the appeal filed by the applicant has an overwhelming chance of success. I have perused the proceedings of the lower court in that regard. I do not wish to pre-empt the appeal so I will not go into details. In brief in regard to count **1** the appeal may succeed on issues of sentence. In regard to count **2** it has a chance to succeed in its entirety. In the circumstances I am satisfied that the application is deserved and should be allowed.

I will allow the application by granting the applicant bail pending appeal in the following terms:-

That the applicant be released on a bond of 100,000/= with one surety of like sum or alternatively cash-bail of 30,000/=.

The Deputy Registrar to examine and approve the surety if the cash -bail is not paid.

Dated at **Machakos** this **22nd** day of **May, 2006**.

J. Lesiit

JUDGE

19/5/2006.



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