



IN THE COURT OF APPEAL

AT NAIROBI

(Coram:Nyarangi, Platt & Gachuhi JJA)

CRIMINAL APPLICATION NAI 14 OF 1986

BETWEEN

DANIEL DOMINIC KARANJA.....APPLICANT

AND

REPUBLIC.....RESPONDENT

(Application for bail pending appeal in an intended appeal from a conviction and sentence of the High Court at Nairobi)

JUDGMENT

The applicant, Daniel Dominic Karanja, asks this court to release him on bail pending the hearing of his appeal against summary rejection of his appeal pursuant to section 352(2) of the Criminal Procedure Code (cap 75). He was convicted of three counts of obtaining by false pretences contrary to section 313 of Penal Code (cap 63) and sentenced to 2 year's imprisonment on each count, the sentences to be served concurrently. His reasons for the application as contained in his affidavit in support of the application are that his appeal to the High Court was summarily rejected, that his appeal has overwhelming chances of success, he has served 7 months of the sentence, that if his appeal succeeds he will have served a substantial part of the sentence, that he is in poor health, was of good character before conviction, will not abscond if released on bail and that he can provide acceptable sureties. In his address to the court, the applicant said his family is facing hardship, that he was on bond during the trial and did not abscond and that the lower courts misapprehended the evidence of identification.

Learned State Counsel, Mr Gathaara urged that the application should be dismissed for the reason that the appeal has no likelihood of succeeding. Mr Gathaara submitted that the identification of the appellant was proved beyond any shadow of doubt.

The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant considerations would be whether there are exceptional or unusual circumstances. The previous good character of the applicant and the hardship, if any, facing the wife and children of the applicant are not exceptional or unusual factors: see *Somo v Republic* [1972] E A 476. A solemn assertion by an applicant that he will not

abscond if he is released is not sufficient ground, even with support of sureties, for releasing a convicted person on bail pending appeal. The applicant was certified to be fit by a doctor on September 23, 1986 and so no issue of illhealth arises. We are not to be taken to mean that ill-health per se would constitute an exceptional or unusual circumstance in every case. There exist medical facilities for prisoners in the country.

This court has the same authority and jurisdiction as is vested in the High Court. So notwithstanding the summary rejection of the appeal by the High Court, this court will be free to hear or not to hear the appeal. The fact of summary rejection will not influence the result of the appeal.

We have perused the proceedings and the judgment before the trial court and considered all that against the grounds of appeal, the affidavit in support of the application, the applicant's submission and the reply by learned state counsel. We are respectfully of the view that at this stage there is not before us an overwhelming chance of the appeal being successful. Therefore the application is refused.

Dated and Delivered in Nairobi this 24th day of October 1986.

J.O.NYARANGI

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JUDGE OF APPEAL

H.G.PLATT

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JUDGE OF APPEAL

J.M.GACHUHI

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JUDGE OF APPEAL

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