

TANZANIA / JUDGMENT

20050419 TZHC Dar es Salaam

COURT
TZHCDECIDED
19 April 2005

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1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CRIMINAL APPEAL NO.170 OF 2004
(Originating from Cr. Case No.1043/2000 From the Decision of Resident Magistrate Court of
Kisutu AT DAR ES ES SALAAM IN THE MATTER OF APPLICATION FOR BAIL PENDING APPEAL
AMIN MOHAMEDAPPLICANT VERSUS REPUBLIC RES
PON DENT

RULING

SHANGWA, J. . . This is an application for bail pending appeal. It has been brought by the applicant Amin Mohamed under 5.368 (1) of the Criminal Procedure Act, 1985. It is supported by his affidavit. At present, he is serving a sentence of three years' term of imprisonment at Keko Prison, which was imposed on him by the Court of the Resident Magistrate at Kisutu, in Criminal Case No.1043 of 2000, after having been found guilty and convicted of the offence 2 of Breaking into a building and committing an offence C/s 296 (2) of the Penal Code. He was jointly and together charged with five others. His name appears on the charge sheet as accused number six. After having been convicted and sentenced to imprisonment, he appealed to this court as he was not satisfied with both conviction and sentence imposed on him. His appeal is number 170 of 2004. It is yet to be heard and determined. He is now praying to be released on bail pending the hearing and determination of his appeal. I, Learned counsel for the applicant Prof. Safari has raised two major grounds for this application. First, that the applicant is ill. Second, that his appeal against conviction and sentence by the Court below has overwhelming chances of success. On the first ground, Prof. Safari submitted that the applicant is suffering from hypertension, headache and diab~tes. On the second ground, he submitted that the applicant's appeal has overwhelming 3 chances of. success as he was convicted on weak circumstantial · evidence. In reply to his submissions, learned State Attorney for the Republic Mr. Mwipopo submitted on the first ground that the applicant's illness which is composed of hypertension, headache and diabetes is treatable while in Prison. On the second ground, he submitted that there is strong evidence on record to prove that the applicant committed the offence with which he was charged and found guilty by the court below which convicted him thereof and sentenced him to imprisonment. Whereas learned counsel for the applicant prayed that the applicant's application be allowed on the two grounds advanced by him, learned State Attorney prayed that the applicant's application be dismissed for lack of merit. There is no dispute that the applicant is ill. The issue is whether his illness constitutes a sufficient cause to grant him bail 4 pending

appeal. For me, I think it does. His health problems . namely hypertension, headache and diabetes with which he is affected cannot be controlled when one is living in poor Prison conditions as those at Keko Prison from where he is serving his sentence. The said prison is crowded with prisoners. The majority of them are very noisy. Those who are serving long sentences are in a State of despair and are quite trouble some in their daily life. The prison food services are notoriously poor. Mostly, the prisoners are fed on porridge, Ugali, bean's and broth. Sometimes they put much sugar in porridge and much salt in the beans and broth. Patients with diabetes and hypertension such as the applicant are advised by medical Doctors not to_ take sugared and salty foods. When such a patient is in prison such as is the applicant, it becomes next to impossible to avoid noisy situations which are prevalent there. Also, it is next to impossible to avoid sugared and salty foods which are detrimental to diabetic patients and patients who are suffering from hypertension such as is the applicant. This means that the •• 5 applicant's illness is not controllable in prison and for this reason, there is a sufficient cause for him to be granted bail pending the hearing and determination of his appeal. . One of the tests which is commonly applied by this court in considering applications of this nature is whether or not the applicant's appeal has overwhelming chances of success. This is an old test. I find that this old test has some disadvantages in applying it. One of its greatest disadvantage is that it attracts pre-mature comments by the court on the merit of the appeal and it calls for a pre judgment in the pending appeal. Due to such a disadvantage, I will not apply it in this case. For the reason which I have earlier given, I hereby grant this application and order that the applicant be released on bail pending appeal in the sum of shs.10,000,000/= with two reliable sureties each in like sum. 6 The sureties have to be approved by the District Registrar. The applicant has to surrender his passport if any to the Central Police Station, Dar es Salaam. In addition to that, the applicant has to report to the District Registrar once in every month starting from next month. until his appeal is heard and finally determined. A.F. Shangwa JUDGE 19/4/2005 Delivered in chambers in the presence of the applicant and his learned counsel Prof. Safari together with learned State Attorney Mr. Mwipopo for the Republic. ~ A.F. Shangwa JUDGE 19/4/2005

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