



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO.31 OF 2021

HUSSEIN SALAT MOHAMED.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged in Criminal Case No. E 402 of 2021 before the Wajir Principal Magistrate's Court. He was faced with two counts namely;

Count I: Giving false information to a person employed in the public service contrary to Section 129(a) of the Penal Code.

Count II: Attempt to procure registration of a person by false pretenses contrary to Section 320 of the Penal Code.

2. The Applicant at the Initial plea taking pleaded not guilty to both Counts, thereafter he had a change of mind and sought to change his plea to that of guilty and was convicted on his own plea of guilty and sentenced to 3 years for the 1st count and 1 year for the 2nd count. The counts were to run concurrently.

3. On 24th of August 2021 the Applicant preferred an appeal to this court on several grounds that may be summarized as follows; -

a. The Applicant was not supplied with relevant documents.

b. The charge against the Applicant was not read and explained to him in a language he understood and the same became clear upon sentence and imprisonment.

c. The court did not warn the Applicant nor was it cautious when the Appellant changed his plea.

4. On the 15th of September 2021 the Applicant moved this seeking for bond pending appeal on grounds that he is dissatisfied with the trial court's judgement; he suffers from asthma, ulcers and contracted Covid-19; the appeal will take time and it is likely to be rendered nugatory.

5. Bond pending an appeal unlike bond pending trial is not an automatic right. For the reason that the appellant is no longer deemed innocent and it is necessary that the Appellant proves the existence of exceptional or unusual circumstances that would favor release on bond or where the applicant establishes that prima facie there is likelihood of the appeal succeeding.

In the case of **Jivra Shah vs Republic [1986] KLR at 605**. The principles were clearly enunciated as follows;

“I. The existence of exceptional or unusual circumstances upon which the court may rely on

II. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial part of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.

III. The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued.”

6. Having considered the application, affidavit in support, the grounds of opposition and submissions from both sides I do agree with the

State that nothing exceptional nor unusual circumstances has been placed before the court. Further, and without seeming insensitive, sickness is recurrent to all prisoners. Most of the prison facilities have clinics and where necessary prisoners are referred to government facilities for treatment. It was not said that the applicant cannot receive treatment while in prison. Indeed, earlier in these proceedings the court noted improvement in the Applicant's health.

7. Neither was it established that substantive points of law to be argued would militate towards a successful appeal.

8. Thirdly this court did several 2021 appeals in the same year. Had the appeal been admitted the case would probably have been dispensed with. There is no likelihood of any delay whatsoever and the ball is in the court of counsel on record to prepare the record of appeal for immediate hearing.

9. For the reasons above the application is denied.

DATED, DELIVERED AND SIGNED THIS DAY OF 20th JANUARY 2022.

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ALI-ARONI

JUDGE