



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiplangat v Republic (Criminal Appeal E009 of 2022)  
[2022] KEHC 535 (KLR) (20 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 535 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL E009 OF 2022  
AN ONGERI, J  
MAY 20, 2022**

**BETWEEN**

**CORNELIUS KIPLANGAT ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Application coming for consideration in this ruling is the Notice of Motion dated 9/5/2022 seeking the release of the Accused Person pending the hearing of the appeal filed herein against conviction and sentence.
2. The Applicant was sentenced to five (5) years imprisonment for the charge of stealing by servant contrary to section 281 of the *Penal Code*.
3. The Learned Counsel for the Accused Person submitted orally that the Constitution provides for bail pending appeal and further that the provision was not put in place in vain.
4. The Respondent opposed the application and submitted that the Applicant has been convicted and the presumption of innocence does not apply to him.
5. The sole issue for the court's determination is whether the applicant herein is entitled to bail pending appeal.
6. Section 357 (1) of the *Criminal Procedure Code* provides for admission to bail pending appeal, it states that;

“After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his



request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”

7. On the issue of admission to bail pending appeal, in the case of *Mutua v Republic* [1988] KLR 497, the Court of Appeal stated as follows; “It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal.”
8. Similarly, in the case of *Charles Owanga Aluoch v Director Of Public Prosecutions* [2015] eKLR, it was held that; “The right to bail is provided under Article 49(1) of the Constitution but is at the discretion of the court, and is not absolute. Bail is a constitutional right where one is awaiting trial. After conviction that right is at the court’s discretion and upon considering the circumstances of the application.
9. Different principles must apply after conviction as the accused person becomes a convict and the presumption of innocence no longer applies and the sentence starts to run from the date of his conviction.
10. The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored.
11. In the case of *Jiv Raji Shah v R* [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows;
  - (i) Existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail.
  - (ii) It appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of a substantial point 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, then, a condition of granting bail will exist.”
12. It has not been shown that this is a case with exceptional or unusual circumstances warranting the admittance of bail pending appeal and neither does the appeal herein have an overwhelming chances of success.
13. The Application for bail pending appeal lacks in merit.
14. The Applicant to remain in Custody until his Appeal is heard and determined.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 20<sup>TH</sup> DAY OF MAY, 2022**

**A. N. ONGERI**

**JUDGE**

