

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 159 OF 2019

NICHOLAS MUGENDIAPPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

[Appeal from the original conviction and sentence of the Senior Resident Magistrate's Court at

Nkubu in Cr. Case E434 of 2021 delivered on 9th September 2021 by Hon J. Irura, SRM]

RULING

[1] The appellant was upon conviction on a plea of guilty sentenced on 9/9/2021 to pay fines of Ksh. 50,000/- and 30,000/- and in default to serve imprisonment for 9 months for each count of Being in possession of alcoholic drinks without a licence c/s 27(1) as read with 27(4) of the Alcoholic Drinks Control Act of 2010 with particulars, that he was on 8th September at around 11.00hrs at Kiathathi location Imenti South sub-County of Meru County found in possession of alcoholic drinks namely, respectively, Mugacha 100 litres and Marwa 50 litres without licence.

[2] By an application dated 22nd September 2021, the appellant now seeks bail pending appeal from the conviction and sentence on the primary ground that the plea of guilty was no unequivocal. It was also urged at hearing that facts of the case had not been read to the accused before plea was accepted and that language in which the plea was not shown. However, having perused the original record of the trial court, it quite clear that the facts were given "*as per charge sheet*" and exhibits of Mugacha 100 litres and Mara 50 litres produced as Exhibits 1 and 2 respectively. The language of the proceeding is shown as follows: "*Interpretation – English/Kiswahili/ Kimeru*" with a selection marking on ***Kiswahili*** as the language of interpretation. The import of these factors shall be determined at the hearing. The court does not find that there is demonstrated by these factors an ***overwhelming*** case in the appeal.

[3] Upon considering the application on the test for bail pending appeal laid out in ***Jivraj Shah v. R*** (1986) KLR 605, that is, whether there exists exceptional or unusual circumstances which justify grant of bail in interests of justice, the court finds that there are no exceptional circumstances, and that the appeal whose record is ready and already transmitted to the High Court may be set down to hearing expeditiously.

ORDERS

[4] Accordingly, for the reasons set out above, bail pending appeal is declined.

[5] The appeal is set for hearing on 8th November 2021.

Order accordingly.

DATED AND DELIVERED THIS 29TH DAY OF OCTOBER 2021.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Mbogo for Mr. L Kimathi Advocate for the Appellant.

Ms. Nandwa, Prosecution Counsel for the Respondent.