

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 265 OF 2019

FRANCIS KIRIMA MIKUNYUA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON APPEAL

The Applicant/Appellant herein Francis Kirima Mikunyua has filed the present application dated 19/12/2019 seeking basically that he be placed on bail pending the hearing and determination of the appeal he has filed challenging the conviction and sentence meted out against him in **Makadara Cr. Case No. 5210/2013**. He also seeks that the sentence be suspended and that a stay be issued against the order that he compensates the complainant. He has supported his application with an Affidavit sworn on 19/12/2019.

It was submitted by counsel for the applicant that the lower court already placed the application on a cash bail of Kshs. 100,000/= pending the determination of his application for bail pending appeal. Further, that the appeal has already been filed and the applicant is not a flight risk.

It was also argued that the applicant has an arguable appeal. And that being one of ill health, his condition would be compromised should he be denied bail pending appeal.

Mr. Momanyi for the state confirmed that the state does not oppose this application. He further contended that the filing of the petition of appeal, would in his view be tantamount to an order of stay. This obviously is a rather inaccurate submission. He otherwise confirmed that pursuant to the sentence of the lower court, the applicant had already paid the complainant Kshs. 300,000/=.

I have considered the submissions of both sides herein. Important to note are the submissions of counsel for the state that the state is not opposed to this application. It is for this reason that this court would not venture into determining whether the applicant's appeal filed has high chances of success. It is however important that this court while allowing this application for bail pending appeal, sets conditions that would ensure that the appeal filed is expeditiously determined on merit. I accordingly therefore allow this application dated 19/12/2019 and make the following specific orders: -

- i. That the applicant, having already paid a sum of Kshs. 300,000/= as part of the amount ordered to be paid as compensation, the applicant is hereby ordered to pay the balance of the amount totaling to Kshs. 1,200,000/=. However, the applicant shall deposit this sum with the court to await the outcome of the appeal filed.
- ii. That upon the payment of the said sum into court (Kshs. 1,200,000=), the applicant may be released on a cash bail of Kshs. 100,000/= pending the hearing and determination of the appeal filed.

Orders accordingly.

Dated at Nairobi This 22nd Day of January 2020

HON. OGEMBO D. O.

JUDGE

In the Presence of:

1. The Applicant – present in person

2. Mr. Kenyatta and Ms. Kimani for Momanyi for the state