



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAHURURU**  
**CRIMINAL APPEAL NO.5 OF 2020**  
**(Appeal Originating from Nyahururu CM's Court Cr.No.2904 of 2015 by Hon. C. Obulutsa – C.M.)**

**AMOS WANGOMBE WANYIRI.....APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

This is an application seeking bail pending appeal. Amos Wang'ombe Wanjiri was convicted on 19/5/2020 and sentenced to serve 18 months imprisonment in Nyahururu C.M.Cr.2904/2015. He is dissatisfied with the trial court's judgment. He has brought this application pursuant to Section 357 of the Civil Procedure Code seeking to be released on bail pending the appeal.

The grounds upon which he brings the application are that he was sentenced to prison without an option of a fine; that the appeal has high chances of success and his advocate applied to be supplied with typed copies of the proceedings but they may not be supplied quickly due to the Covid 19 challenges; that the applicant is likely to serve the full or substantial part of the sentence before the appeal is heard. The applicant denies being a flight risk as he was on bond during his trial in the subordinate court; that he has a place of abode in Ndaragwa and is well known to the complainant.

The supporting affidavit was sworn by the applicant's counsel Mr. Waichungo. Counsel also filed submissions. Counsel relied on the decision in *Somo v Republic (1972) EA 476* which laid down some of the key principles that the court will consider in such an application. They are as follows:-

- (1) *Whether the appeal has high chances of success;*
- (2) *Whether there is a possibility of a delay in the determination of the appeal;*
- (3) *Whether the applicant is a first offender;*
- (4) *Whether the applicant complied with the conditions given in the trial court.*

Counsel submitted that though the proceedings of the trial court are not yet typed, the grounds filed do show that the applicant has an arguable appeal and he relied on the decision of *Charles Owangu Aluoch v Republic Cr.A.164/2013 Nakuru*.

As regards the possibility of delay in hearing the appeal, it was submitted that the proceedings are not yet typed to enable the applicant to prepare the record of appeal and it might take too long so that the applicant will have served most of the sentence before the appeal is heard.

It was further argued that the applicant was treated as a first offender and complied with the bail terms during the hearing before the trial court. Counsel also made reliance on *Nyeri H.Cr.50/2013 Samuel Macharia Njogu v Republic*.

By a letter dated 12/6/2020, Ms. Rugut, learned counsel for the State intimated that they did not wish to oppose the application.

An application for bail pending appeal is an invitation of the court to exercise its discretion and it is upon the applicant to demonstrate that he is deserving of the exercise of the said discretion. It is worth noting that having been convicted by a competent court, the applicant no longer enjoys the privilege to be presumed innocent till proved guilty.

The celebrated case of *Jivraj Shah v Republic (1986) eKLR* which also set down principles that may guide the court in an application for bail pending appeal and they are as follows:

1. *The existence of exceptional or unusual circumstances upon which a Court of Appeal can fairly conclude that it is in the interest of justice to grant bail;*
2. *Whether the appeal has overwhelming chances of success;*
3. *Whether there is a likelihood of the appellant having served a substantial part of the sentence by the time the appeal is heard and determined.*

The applicant was only convicted on 19/5/2020, about two months ago. The sentence is 18 months imprisonment. He has already served two months. Although the applicant has not demonstrated that they have applied for the trial court proceedings. I believe that by the time the lower court proceedings are typed and the same proof read, the applicant may have served a substantial part of the sentence will have been served by the time the appeal is heard.

As for whether the appeal has high chances of success, the lower court proceedings were not available to be perused. The grounds of appeal alone cannot be able to demonstrate whether the appeal has high chances of success.

As for whether the applicant was on bond when in the trial court, I find that is not point for granting bail pending appeal because the appellant has already been convicted by a competent court of law and unless set aside, that decision is still valid.

In the end, I do find that the applicant is likely to serve the whole sentence or a substantial part of it before the appeal is heard and is therefore entitled to an exercise of this court's discretion to grant bond pending appeal. The application is allowed. The applicant may be released on bond of Kshs.150,000/= plus one surety of a similar amount. It is so ordered.

Dated, Signed and Delivered at NYAHURURU this 28th day of July, 2020.

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R.P.V. Wendoh  
JUDGE  
PRESENT (Virtual):  
Ms. Rugut – S/C

Mr. Waichungo for applicant  
Appellant – present  
Eric – Court assistant