



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL APPEAL CASE NO. E001 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

OMAR YAKUB ATHMAN.....ACCUSED

Coram: Hon. Justice R. Nyakundi

Mr. Mwangi for state

Aboubakari Advocate for accused person

RULING

The appellant seeks a single relief from this Court namely:

(1). The Honourable Court be pleased to grant bail to the applicant pending the hearing and determination of the appeal.

In order to appreciate the ensuing issues, the applicant filed an affidavit in support of the application.

Arguments by counsel for the appellant begins his arguments as premised in the motion that the appeal in question has high chances of success. Counsel further stated that the relief for bail is of immense importance for reasons that the appeal may take long and likely to prejudice the appellant if he continues to serve the impugned sentence.

The respondent counsel did not put up any meaningful contest to the appellant's notice of motion in respect of this, it does not follow that the application is summarily meritorious. In short, the Court has to appraise the record and in view of the evidence allow or decline bail pending appeal.

Determination

I have carefully considered the application for bail pending appeal together with the affidavit evidence. Needless, to say that the trial Court record and subsequent Judgment forms the basis and emphasis on pertinent issues such as:

(1). The likelihood of success of the appeal.

(2). That there may be little chances that the appeal would be determined expeditiously.

(3). That in the application for bail pending appeal there are compelling and exceptional circumstances dependent on the facts of the case to grant bail to the appellant pending the hearing and determination of his appeal.

In determining whether to grant bail pending appeal, the Court is required to perform a balancing exercise. Leave of the Court for a convict to be released on bail pending appeal could not be granted readily, until the test in the case of **Jivray Shah v R {1986} KLR 605 and Chambhai v R {1971} EA 343** has been discharged.

In instant application these conditions have not been fulfilled. Having inquired to all the circumstances and being mindful of the purpose of bail pending appeal, I am of the option that right is not available to the applicant. The upshot is the motion dated 29.10.2020 is denied.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 18TH DAY OF DECEMBER 2020

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R. NYAKUNDI

JUDGE