

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. APPLICATION NO. 62 OF 2016

GEOFFREY NJEKA SHISIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By Chamber Summons dated 17th February, 2016, the Applicant herein prays to be released on bail pending appeal. The grounds on which the application is premised in a nutshell, are that the Applicant has an appeal with overwhelming chances of success, that he is a family man with school going children who depend on him, that while undergoing trial he had been released on a cash bail of Kshs. 20,000/= and did not abscond the trial and that he will abide by any terms and conditions that the court will grant. The application is supported by the Applicant's own affidavit sworn on 17th February, 2016 and a Supplementary Affidavit sworn by himself on 16th March, 2016.

The principles the court should consider in granting bail pending appeal were laid down in the case of **Jivraj Shah vs Republic [1986] eKLR** in which the court held that:

- 1. The principle consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests of justice to grant bail.***
- 2. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist.***
- 3. The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued."***

In the present case, the Applicant has raised weighty grounds of appeal in his Petition of Appeal filed on 27th January, 2016. The main grounds are that the prosecution did not discharge its burden of proof in establishing that the Applicant caused grievous harm to the complainant and that given the circumstances of the case, the sentence was excessive. He had been charged with causing grievous harm contrary to Section 234 of the Penal Code. It was alleged that on 27th December, 2010 at Mathare 4A in Nairobi within Nairobi Area Province jointly with another not before the court unlawfully did grievous harm to Pamela Atieno. A look at the evidence adduced before this court, prima facie, demonstrates that the Applicant has not raised frivolous grounds of appeal. In that regard, it is the view of the court that the application is merited. On other grounds on which the application is premised, this court does not think they warrant the Applicant to be released on bail pending appeal.

In the result, I allow the application with an order that the Applicant shall pay a cash bail of Kshs.30,000/= or deposit a bond of Kshs. 100,00/= with one surety of a similar amount to be assessed by the Deputy Registrar of this court. It is so ordered.

DATED and DELIVERED this **31st** day of **MARCH, 2016**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Mr. Ruto for the Applicant*
2. *Ms. Lango holding brief for Ms. Aluda for the Respondent.*