

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL CASE NO.116 OF 2016

(An Appeal arising out of the conviction and sentence of Hon. Kithinji A. R. - PM delivered on 12th August 2016 in Makadara dCM.TR. Case No.7151 of 2009)

DAVID MUTUKU SILA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

The Appellant, David Mutuku Sila was convicted of three (3) counts of **causing death by dangerous driving**. He was sentenced to pay a fine of Kshs.100,000/- for each of the three counts or in default he was to serve five (5) years imprisonment on each count. The Appellant was aggrieved by his conviction and sentence. He has lodged an appeal before this court. The appeal is pending hearing and determination.

Pending the hearing of the appeal, the Appellant has applied to be released on bail pending appeal. The Appellant states that he has an arguable appeal which will likely succeed during hearing. He was aggrieved with the manner in which the trial court assessed the evidence which found him guilty of the offences that he was charged. He was of the view that the facts of the case actually disclosed that he was not to blame for the accident. He took issue with the manner in which the trial court sentenced him. He was of the view that the sentence was disproportionate and was not clear whether the Appellant was to serve the sentences concurrently or consecutively. Ms. Nyauncho for the State conceded to the application on the sole ground that the sentence that was imposed by the trial court may well be found to be illegal during the hearing of the appeal.

The principles to be considered by this court in deciding whether or not to release the Applicant on bail pending appeal were set out by the Court of Appeal in **Jivraj Shah –vs- Republic [1986] KLR 605** at page 606:

*“There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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 in law to be urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision in **Somo –vs- Republic [1972] E A 476** which was referred to by this court with approval in **Criminal Application No.NAI 14 of 1986, Daniel Dominic Karanja –vs- Republic** where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. It is almost self-defeating to attempt to define phrases or to establish formulae. There is a helpful passage in Archbold, *Criminal Pleading Evidence and Practice*, 41st*

Edition page 783, paragraph 7 – 86.”

In the present application, the State concedes that there is likelihood that the Appellant’s appeal on sentence may succeed during the hearing of the appeal because the trial court failed to consider the applicable law when he sentenced the Appellant. This court agrees with the State that on that ground alone, the Appellant’s appeal has an overwhelming chance of success. In the premises therefore, the application for bail pending appeal has merit and is hereby allowed. The Appellant shall be released on bail pending appeal on condition that he posts bond of Kshs.400,000/- with one surety of the same amount or in the alternative he shall deposit a cash bail of Kshs.200,000/-. He shall be required to appear before the Deputy Registrar for Mention of the appeal once every month until the appeal is heard. It is so ordered.

DATED AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2016

L. KIMARU

JUDGE