



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 31 OF 2015

WILLIAMSON KARIMI NJOGUAPPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(An appeal from the conviction and sentence of the Principal Magistrate's Court (P.M. Kiama) at Wang'uru, Criminal Case

No. 502 of 2014 dated 10th July, 2014)

RULING

1. **WILLIAMSON KARIMI NJOGU**, the appellant herein, has moved this Court vide a Notice of Motion dated 14th July, 2015 brought under **Sections 356** and **357** of the **Criminal Procedure Code** and **Article 49** of the Constitution for the following orders:
 - (i) ***That the application be certified as extremely urgent and that service be dispensed with.***
 - (ii) ***That the appellant be granted bail pending appeal.***
 - (iii) ***That there be suspension of execution of the sentence of imprisonment imposed on the appellant by the Senior Principal Magistrate at Wanguru Criminal Case No. 502 of 2014.***
2. At the hearing of the application, prayer (1) had been spent and the applicant's counsel told this Court that he was abandoning prayer (3) and was therefore pursuing prayer (2). **Mr. Mungai**, counsel for the Applicant told this Court that he was relying on the grounds on the face of the application and supporting affidavit. The main ground for the application was that the Applicant's appeal was based on good grounds and that he was convicted on a bailable offence. In his sworn affidavit the Appellant deposed that his appeal has high chance of success. He also deposed that he was a vibrant adult and a civil servant whose services are required in building the Nation. He also expressed his willingness to abide by any bail terms that may be imposed on him.
3. The State through the office of the Director of Public Prosecutions told this Court that they were not opposed to the application. However that notwithstanding, this Court must determine the application on the merits.
4. I have read through the judgment of the subordinate court and though the proceedings were not availed to this Court at the hearing of the application for bond pending appeal, I was able to gather from the copy of judgment exhibited as "Dk1" in supporting affidavit that the applicant was convicted on the alternative charge of committing an indecent act with a child contrary to **Section 11(1)** of the **Sexual Offences Act** and acquitted on the main charge of defilement contrary to

- Section 8(1) (b)** of the said Act. He was sentenced to 10 years imprisonment and has appealed against both the conviction and sentence in this Court through the pending appeal.
5. The Applicant through counsel told this Court that he is doing what he can to expedite the appeal. But during the pendency of the same he is asking to be released on bail. The principles that apply in bail pending appeal were well captured in the case of **RAGHBIR SINGH LAMBA –VS- R (1958) E.A. 337** where Spry J., made the following observations:

“The principle to be applied is that bail pending appeal should only be granted for exceptional and unusual reasonsneither the complexity of the case nor the good character of the applicant nor alleged hardship to his dependants justified the grant of bail but where the court is satisfied that there was an overwhelming probability that the appeal would succeed, application would be granted.”

6. This Court is further guided by the decision of the Court of Appeal in the case of **JIRUAJ SHAH -VS- R (1986) KLR 605** where the Court made the following observations:
- i. ***That the principal consideration in an application for bail pending appeal is, the existence of “exceptional” or “unusual circumstances” upon which an appellate court can fairly conclude that it is in the interests of justice to grant bail.***
 - ii. ***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 argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exist.***
 - iii. ***That the main criteria is that there is no difference between overwhelming chance 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, weight and relevance of the points to be argued.”***
7. This Court pressed the Appellant’s counsel to illustrate what exceptional or unusual circumstances obtained in the appeal or the application and reasons given were that the appeal stood high chance of success and that the applicant is a civil servant who would be more useful to Kenyans outside rather than inside prison. He also said that the Applicant is a father of a young family who needed him. The reasons given I am afraid do not meet the threshold as illustrated by the above authorities. This Court is not persuaded at this stage that the appeal stands high chances of success. The Applicant placed the copy of the judgment before this Court and it is difficult to gauge the chances of appeal by just going through the judgment in the absence of the proceedings.
8. It is also important to note that Article 49 of the Constitution deals with rights of arrested persons who are entitled to bail unless there are compelling reasons to deny bail. In situations where a person has been convicted then the tide changes. As illustrated by the above authorities and the position this Court has taken in similar cases for example the case of **JOSEPH GATIMU MUREITHI –VS- R (CR.A. NO. 51 OF 2014** in this Court) and the case of **RICHARD MUNENE NDEGE –VS-R (CR.A.NO. 126 OF 2013)**, a convicted person really must show compelling reasons to be released on bail pending appeal. The Appellant herein has not demonstrated any unusual or exceptional circumstance that would entitle him to bail pending appeal. Though this Court may not have reasons to doubt his usefulness if released on bond, that is not one of the factors to be considered in an application of this kind.
9. In the end, I do not find merit in the application dated 14th July, 2014. The Applicant was sentenced to serve 10 years and given the seriousness exhibited by the Appellant’s counsel to pursue the appeal expeditiously, I am sure the same will be concluded in less than a year and by which time he will not have served substantial part of his sentence. For these reasons the application for bail pending appeal is therefore declined.

Dated and delivered at Kerugoya this 23rd day of July, 2015.

R. K. LIMO

JUDGE

23.7.2015

Before Hon. Justice R. Limo

Court clerk Mbogo

Appellant absent

Karweru holding brief for Mungai for appellant

Omayo for State

COURT: Ruling dated, signed and delivered in the open court in the presence of Karweru holding brief for Mungai and Omayo for State.