



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL APPEAL NO. 38 OF 2015**

**JOSEPH KIHAGI MUGO.....APPLICANT/APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

1. **JOSEPH KIHAGI MUGO**, the applicant herein was convicted in a **Traffic case No. 214 of 2014 at Kerugoya Chief Magistrate's Court** and sentenced to serve two (2) years imprisonment.
2. Aggrieved by both the conviction and sentence, he has appealed before this Court. The appeal is pending for admission. At the pendency of appeal, he has filed Notice of Motion dated 14<sup>th</sup> September, 2015 for bail pending appeal and has based his application on the following grounds namely:

*(i) That he is likely to serve his sentence in prison before his appeal is heard and determined.*

*(ii) That the appeal has overwhelming chance to succeed.*

*(iii) That he is willing to abide by any terms imposed by this Court.*

3. The Respondent, represented by learned State Counsel at the hearing of this Motion, informed the Court that he was not opposed to the Applicant being released on bail pending appeal. This Court however, will determine the application based on its merits.
4. The principles that guide courts when determining bail pending appeal were laid out in the Court of Appeal case in **KIRVAJ SHAH -VS- R (1986) KLR** that adopted (with approval) the reasons given in **RAGHBIR SINGH LAMBA -VS- R (1958) EA 337**. The principles are as follows:

*i. The principal consideration is 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.*

*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. See also the case of **SOMO -VS- REPUBLIC [1972] EA** where the court decided that the most important consideration is where the chances of success in the appeal is so "overwhelming that there is no justification in depriving the applicant of his freedom."*

5. I have looked at the proceedings carefully and the judgment from the lower court. I have

specifically looked at the particulars in the Charge Sheet and the basis for conviction. Without delving into the details so as not to prejudice the pending appeal one way or the other, I am satisfied that the grounds of appeal presented in this petition *prima facie* raise serious issues that have raised optimism from the Appellant that he has high chances of success and he is not alone. The learned counsel for the Respondent does share in that optimism which explains the reasons why he chose not to oppose the application. I have also considered the length of the sentence handed to the Appellant and I do agree with the Appellant that a substantial part will have been served by the time the appeal is heard and determined.

It is on that basis that I will allow this application. The Applicant may be released on a cash bail of Kshs.50,000/=. The appeal shall be mentioned on 9<sup>th</sup> November, 2015 for further orders on the appeal itself.

***Dated and delivered at Kerugoya this 22<sup>nd</sup> day of September, 2015.***

**R. K. LIMO**

**JUDGE**

22.09.2015

Before Hon. Justice R. Limo

Court Assistant Willy Mwangi

Omayo for State

Joseph Kihagi present in person

**COURT:** Ruling signed, dated and delivered in the presence of the applicant Joseph Kihagi Mugo in person and Omayo for State.

**R. K. LIMO**

**JUDGE**