



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL APPEAL NO.176 OF 2013

SAMUEL WARUNGU WANJIKUAPPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Traffic Case Number 18 of 2012 in the Senior Principal Magistrate's Court at Kerugoya – Hon. Teresia Ngugi(SPM))

RULING

The appellant **SAMUEL WARUNGU WANJIKU** through a Notice of Motion filed on 6th November 2013 under a certificate of urgency approached this court with a prayer that he be admitted to bail pending the hearing and determination of his appeal.

The application is based on grounds that he sustained injuries during the accident forming the basis of his conviction and he needs advanced treatment which is not available in prison; that he was out on bond during the trial in the lower court and he did not abscond; and that his appeal has high chances of success.

The application is supported by an affidavit sworn by the appellant on 6th November 2013 in which he complained that he had been convicted with the offence of causing death by dangerous driving contrary to **Section 46** of the **Traffic Act** on the basis of contradictory and insufficient evidence subsequent to which he was sentenced to two years imprisonment.

Besides duplicating the grounds stated on the face of the application, the applicant deposed that his appeal has high chances of success and that there was a risk of him serving a substantial part of his sentence before his appeal is heard and determined.

When the application came up for hearing, the appellant relied on written submissions which he presented to the court.

In his submissions, he challenged his conviction by the learned trial magistrate and sought to demonstrate why he opined that his appeal had high chances of success.

The state represented by learned state counsel Mr. Sitati did not oppose the application. Counsel agreed with the applicant that his appeal had high chances of success. He confirmed to the court to that note the appellant was out on bond during the trial in the lower court and he did not abscond.

In **DOMINIC KARANJA VS REPUBLIC (1986) KLR 612**, the Court of Appeal laid down the principles which the court ought to consider in deciding whether or not to grant bond/bail pending appeal.

The court held that;-

1. **The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.**
2. **The previous good character of the applicant and the hardships, if any facing his family were not exceptional or unusual factors. His health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.**
3. **A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.**

The purpose of granting bail pending appeal is to secure the liberty of a convicted person as he awaits the hearing of his appeal if the court is satisfied that the appeal has overwhelming chances of success since it would not be in the interest of justice to allow such an appellant to continue serving sentence when there was a high likelihood that he might eventually succeed when his appeal is finally determined.

In this case, the appellant has contended and his contention has been supported by the state, that his appeal has overwhelming chances of success.

I have gone through the judgment and the entire record of the lower court and on my part, I can say that there is a sense in which it can be said that the appellants appeal has good chances of success considering that he was convicted of a traffic offence for which he was given a custodial sentence without an option of a fine. It is possible that though there is no doubt that the offence is serious and a sentence commensurate with the gravity of the offence was called for, there is a likelihood that the appellant may be able to demonstrate on appeal that a noncustodial sentence was more appropriate in the circumstance of his case.

In view of the foregoing, I find merit in the application and I consequently allow it. The appellant will be released upon signing bond of kshs 200,000 with one surety of a similar amount. The surety will be approved by the Deputy Registrar of this court.

Once released on bond, the appellant will attend mentions before the Deputy Registrar once in two months until the appeal is heard and determined or until other orders are made by this court. It is so ordered.

C.W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 24TH JANUARY, 2014 in the presence of:-

The appellant

Mr Sitati for the state

Mbogo Court Clerk