



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CRIMINAL APPEAL NO. 39 OF 2014**

**MICHAEL MURIGI KANGETHE ..... APPLICANT**

**-VRS-**

**REPUBLIC.....RESPONDENT**

**RULING**

**MICHAEL MURIGI KANGETHE**, the appellant/applicant herein has applied to be released on bail pending appeal vide the notice of motion dated 12<sup>th</sup> November, 2014.

The appellant/applicant was tried, convicted and sentenced to serve 20 years in prison at Baricho Principal Magistrate’s Court criminal case NO. 1336 of 2012 by Honourable S. Jalang’o Ag. Senior Resident Magistrate. Being aggrieved and dissatisfied the appellant preferred an appeal to this court that was filed on 22<sup>nd</sup> July 2014. He has moved this court under **Section 356** of the **Criminal Procedure Code** for bail but since the appeal has already been filed, the applicant should have moved this court under **Section 357 (1)** as the appeal has already been filed. But having said that I will consider the application on merit nevertheless for the interest of justice.

The application before me is based on two main grounds namely:

1. That the appeal filed has high chances of success.
2. That the appellant will have served a substantial part of his sentence by the time this appeal is heard and determined.

To begin with the second ground, this court is not persuaded the appellant will serve a substantial part of his sentence before the appeal is heard and determined. The applicant was sentenced to serve 20 years and it is unlikely that the appeal filed would take more than a year to be disposed of. If it takes less than a year then very little bit of his sentence will have been served depending of course on the on the outcome of his appeal. The ground cited therefore does not hold any water.

On the issue of the appeal having high chance of success, the state through the office of Director of Public Prosecutor has opposed the application saying that the applicant has failed to demonstrate overwhelming high chances of success in the appeal as held in the case of **DOMINIC SIBI PETER – VS- REPUBLIC (2014) e KLR** where Honourable Justice Lesiit quoting from the case of **SOMO-VS- REPUBLIC (1972) EA, 476**, state as follows:

***“The most important ground is that the appeal has an overwhelming chance of being successful and in which case there is no justification for depriving the applicant his freedom”.***

The applicant through his advocate Mr Ngigi has urged this court to find that he has high chance of success in his appeal owing to the manner in which the evidence of the complainant (PW1) was taken. According to him there is no evidence of voire dire inquiry having been done before allowing her to testify on oath and being a minor the trial court ought to have exercised caution before proceeding to take evidence. To support his assertions , he cited the case of **BEN MAINA MWANGI -VS- REPUBLIC(2006) e KLR** where the court held that a trial court should proceed with caution when taking evidence of a minor by conducting a voire dire inquiry before either administering the oath or taking unsworn evidence and in that the absence of voire dire inquiry is fatal to the trial in a criminal case.

I have looked at both authorities and considered both submissions and though the applicant did not do himself any favours by failing to annex copies of exhibits produced at the trial court to fortify his arguments, I am persuaded going by the proceedings annexed to the application that the appeal has filed has a high chance of success and in view of the pendency of the appeal I opine that the less said the better to avoid prejudice to either party in the appeal .

In the premises I find merit in the application for bond pending appeal. It is allowed. The appellant may be released on a bond of kshs 200,000/- with one surety of the same amount. The appellant's counsel is directed to do a follow up to ensure that the appeal filed together with the lower court file is placed before this court for purposes of directions under **Section 353 and 359 Criminal Procedure Code.**

**R.K.LIMO**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 26<sup>TH</sup> DAY OF NOVEMBER 2014**  
in the presence of:

Mr Miano holding brief for Ngigi counsel for applicant

Mr Omayo for state

Mbogo Court Clerk