



NO.794

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.25 OF 2013

DUKE KERANDI DAVID APPELLANT/APPLICANT

VERSUS

REPUBLIC PROSECUTOR

(From original conviction and sentence by the Ag. SRM Hon. L. Kaityany,

in Kisii CM's Court Criminal case No.378 of 2011)

RULING

1. Before me is the Notice of Motion dated 28th May 2013 by which the Applicant/Appellant Duke Kerandi David seeks to be released on bail/bond pending the hearing and determination of his appeal. The application which is mounted under **Article 49 (1) (h)** of the **Constitution** is supported by 6 grounds that are set out on the face of the application. One of these grounds is that the pending appeal has high chances of success. The applicant also avers that he was on bond during his trial before the lower court and that he is ready and willing to abide by any terms that may be ordered by this Honourable Court for his release. The application is also supported by the applicant's own affidavit dated 28th May 2013.
2. At the hearing of the application, prosecuting counsel Mr. D. Majale, stated that there is no demonstration by the appellant that the pending appeal has any chance of success. However, counsel told the court that since the applicant had been on bail during the trial, he would not oppose the application for bond save to say that the bond terms must be such as would make the applicant attend court as and when required to do so during the pendency of his appeal.

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3. Briefly the facts giving rise to this appeal are that the applicant was tried and convicted of the offence of stealing a motor cycle contrary to **section 278 A** of the **Penal Code**, the particulars being that on the 30th day of March 2011 at Kisii Town in Kisii Central District within Kisii County, he stole a motor cycle registration number KMCH 5975 make TVS Star Red in colour valued at Kshs.82,000/=, the property of Gladys Moraa Bosire. He was sentenced to 2 years' imprisonment.
4. He has appealed. The appeal is admitted but is yet to be given a hearing date. The Record of Appeal has also been compiled and served.
5. In considering an application for bond, the main consideration is whether the applicant will avail himself for the hearing of his case once he is released on bond. The courts have also held that

each application for bond must be considered on its own peculiar circumstances. See **Wainaina – vs- Republic [1990] KLR 332.**

6. I have noted from the file that during the trial the applicant was on bond of Kshs.50,000/= with one surety of same amount. There is no indication that the applicant jumped bail during the hearing of his case. I however now have to consider the fact that the applicant herein is a convict and the temptation to flee might be higher than it was when he was a mere suspect during the trial in the lower court.
7. Taking the above into account and considering the provisions of **Article 49 (1) (h)** of the **Constitution of Kenya, 2010**, I am inclined to grant the application dated 28th May 2013, and hereby allow the same on the following terms:-

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1. *The applicant may now be released on his own bond of Kshs.100,000/= plus 2 sureties of a like amount or deposit a cash bail of*

Kshs.100,000/= (Kenya Shillings One Hundred Thousand Only).

2. *The 2 sureties shall be approved by the Deputy Registrar of this Honourable Court.*
3. *Mention on 14/09/2013 for fixing hearing dates for the appeal.*

8. Orders accordingly.

Dated and delivered at Kisii this 14th day of August, 2013

RUTH NEKOYE SITATI

JUDGE

In the presence of:

Mr. Nyagwencha for Nyatundo for Appellant/Applicant

Mr. Shabola for Respondent

Mr. Bibu - Court Clerk