



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL 54 OF 2012**

**STANLEY NGURURI KARIUKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant was convicted by the lower court in Nakuru C.M.C.Cr. Case No. 1903 of 2006, and sentenced to 1<sup>1/2</sup> (*one and half years*), for the offence of assault causing actual bodily harm contrary to Section 275 of the Penal Code (*Cap. 63, Laws of Kenya*).

He has appealed to this court, but the Record of Appeal is yet to be prepared and filed. He has however come to this court on application dated 26<sup>th</sup> March 2012 seeking orders to be released on bail pending appeal.

The principles upon which this court may grant an applicant bail pending appeal are set out in the case of **DOMONIC KARANJA VS. REPUBLIC [1986] KLR 612**, and also **SHAH JIVRAF VS. REPUBLIC [1986] KLR 605**, and **MUNDIA VS. REPUBLIC [1986] KLR 623**.

In **SHAH (JIVRAJ) vs. REPUBLIC**, the court said, the principal consideration in an application for bail pending appeal is -

- (1) the 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.
- (2) 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 urged and that the sentence or substantial part of it will have been served by the time is heard, conditions for granting bail will exist.
- (3) The main criteria is that there is no difference between overwhelming chances 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 and weight and relevance of the points to be argued.

- (1) admission to bail is a discretionary power which the court must exercise judicially in accordance

with the laid down principles.

- (2) Once a person has been convicted and sentenced, his application for bail pending appeal will be granted only in exceptional circumstances.
- (3) there is presumption is that once a person is convicted he was properly convicted.
- (4) the chances of an appeal succeeding is a factor for consideration in arriving at a decision in an application for bail pending appeal.
- (5) bail pending appeal may be granted where there is a risk that the sentence will have been served by the time, the appeal will be heard but there must exist the major issue of overwhelming chances of the appeal in the first instance.

Applying the above principles and in particular the principle that the major issue of overwhelming chances of success of the appeal in the first instance, there is no material placed before this court that the appeal either raises a substantial point of law or that it has overwhelming chances of success. In the absence of a record of appeal there is no basis for arriving at any such conclusion.

In this case, the Memorandum of Appeal states that the appeal is against the conviction of the appellant for the offence of causing actual bodily harm contrary to section 275 of the Penal Code (*Cap. 63, Laws of Kenya*). It is probable that counsel may be referring to 1948 Edn. of the Penal Code, but under the current Editions of the Penal Code, Section 275 thereof, refers to the general punishment for theft and not assault causing actual bodily harm. The relevant Section for offence of causing actual bodily harm is Section 251 of the Penal Code. The punishment for the offence is imprisonment for five years. A sentence of one and half years would therefore not only be proper, but would also be very lenient. In the absence of a Record of Appeal, I am unable to establish the circumstances leading to the imposition of that sentence.

I have noted both the applicant's age, and the fact of his illness. None of these factors which can be considered either exceptional or unusual circumstances.

Finally there is reason why the appellant should serve his term if his counsel would fast tract his appeal.

For those reasons, I find no good or valid reason for exercising the court's discretion to grant the appellant bail pending appeal. His application dated 26<sup>th</sup> March 2012 is dismissed. It is so ordered.

**Dated, signed and delivered at Nakuru this 20<sup>th</sup> day of April, 2012**

**M. J. ANYARA EMUKULE**  
**JUDGE**