



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CRIMINAL APPEAL 43 OF 2012**

**RODGERS KIPCHUMBA KERING.....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant, **Rodgers Kipchumba Kering**, has filed this Notice of Motion dated 19<sup>th</sup> March, 2012 seeking to be released on bail/bond pending hearing and determination of his appeal. He has predicated his application on three (3) reasons namely:-

ØThat he is a man of good social standing and upright character;

ØThat the Constitution permits such an order; and

ØThat he is ready and willing to furnish sufficient surety.

There is an affidavit in support of the application in which he has deposed, *inter alia*, in addition to the above grounds that he will avail himself for the hearing of his appeal if his application is allowed.

At the hearing of the application on 30<sup>th</sup> April, 2012, counsel for the applicant reiterated, the above grounds. Counsel for the respondent orally submitted that the applicant had not satisfied the conditions for his release on bail/bond pending the hearing and determination of his appeal.

I have considered the application, the supporting affidavit, and the submissions of counsel. Having done so, I take the following view of the matter. The previous decisions of this Court and the Court of Appeal establish the principle that an applicant who has been convicted must show exceptional circumstances and further that it is a question of the Court in its discretion in each case to decide whether such circumstances exist before granting bail/bond pending hearing and determination of the appeal. Whether the appeal has high chances of success is a primary consideration and so is the consideration whether considerable delay in hearing the appeal may be occasioned. Also to be considered is where the sentence imposed may be served or a substantial part thereof served before the appeal is determined. The medical condition of the appellant may also be considered particularly where there are no medical facilities where the appellant is incarcerated. The list of existing circumstances sufficiently exceptional as to justify the court allowing bail/bond cannot be exhaustive. Each case will be considered depending on its own facts

and circumstances.

In the present case, the applicant has not alleged that his appeal discloses points of substance and that it has high chances of success. His good standing in society prior to his conviction and his ability to furnish adequate surety are not, in my humble view, circumstances sufficiently exceptional as to justify this Court in allowing bail/bond pending appeal.

There is further, no suggestion that the applicant's appeal will not be disposed of with dispatch. As a parting short, I quote **Trevelyan J.** in somo -vrs- Republic [1972] E.A 476:-

**“It seems to me that when these applications are considered, it must never be forgotten that the presumption is that when the applicant was convicted, he was properly convicted. That is why he is undergoing a custodial sentence, he must demonstrate if he so wishes to anticipate the result of his appeal and secure his liberty forthwith, that there are exceptional or unusual circumstances in the case. That is why, when he relies on the ground that his appeal will prove successful, he must show that there is an overwhelming probability that it will succeed.”**

In the end, there is no basis for allowing this application. It is dismissed. To expedite disposal of this appeal, I direct the Deputy Registrar to call for the lower court file urgently to pave way for hearing and determination of this appeal with dispatch.

Orders Accordingly.

**DATED AND DELIVERED AT ELDROET THIS 30<sup>TH</sup> DAY OF MAY, 2012.**

**F. AZANGALALA**

**JUDGE.**

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**Read in the presence of:**

Mr. Songok for the applicant.

**F. AZANGALALA**

**JUDGE**

**30/5/2012**