



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MISC. APPLICATION NO. 137 OF 2012**

**SAMUEL KARANJA KIMANI .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The applicant, **SAMUEL KARANJA KIMANI**, was convicted on two (2) counts of causing death by dangerous driving **contrary to section 46 of the Traffic Act**. For each count, the applicant was sentenced to imprisonment for four (4) years. However, the learned trial magistrate ordered that the sentences would run concurrently.

Being dissatisfied with the conviction and sentence, the applicant has lodged an appeal before the High Court.

After filing the appeal, the applicant also filed an application for the stay of execution of the sentences. In the alternative, the applicant sought bail pending the hearing and determination of the appeal.

Mr. Nderitu, the learned advocate for the applicant, submitted that the applicant's appeal had high chances of success. He also said that the sentence of 4 years imprisonment was manifestly excessive.

When I asked the applicant to tell me what the maximum sentence was for the offence of causing death by dangerous driving, he told me that the statute prescribed 10 years imprisonment.

Nonetheless, Mr. Nderitu emphasized that the statute did provide for other modes of sentencing, such as the cancellation of the Driving Licence.

Citing the Court of Appeal's decision in **TIMOTHY ORWEYO MISSIONI Vs REPUBLIC CRIMINAL APPEAL No. 39 of 1979**, the applicant submitted that a first offender, (such as he was), should not normally be sentenced to imprisonment unless he was intoxicated.

Finally, this court was reminded that during the trial, the applicant was out on bail.

In answer to the application, Ms Mwanza, learned state counsel, submitted that the appeal had no chances of success.

The respondent's view was that the evidence adduced by the prosecution was water-tight. The respondent also said that the applicant had failed to demonstrate to this court that there were some special circumstances that would warrant the grant of bail.

In the light of the fact that two (2) people lost their lives in the accident caused by the applicant, the respondent argued that the sentence was not only legal, but was definitely not excessive.

In determining the application, this court must apply its mind to the, prima facie, strength of the pending appeal. However, the court must strive to avoid making any explicit findings which may end up forcing the hand of the Judge who will ultimately hear and determine the appeal.

There is no doubt that two pedestrians were knocked down by the vehicle which the applicant was driving. The point of impact was off the road.

The applicant said that he was driving at about 70-100 kph. According to him, he was unable to stop the vehicle in time, after the vehicle ahead of him "stopped suddenly". He therefore swerved to the left, to avoid hitting that vehicle. As a consequence, the vehicle he was driving hit two (2) pedestrians who were about 3 metres off the road.

As the applicant's own defence appeared to confirm those facts, which formed the foundation for his conviction, I am unable to share his optimism regarding the chances for the success of his appeal against conviction.

Meanwhile, it is noted that during mitigation, the applicant told the trial court that he has a wife and a child, both of whom depend on him.

In his Petition of Appeal, he said that he had had a clean driving history of "over 10 years". But in his affidavit in support of the application for bail pending appeal, the applicant said that he had driven on Kenyan roads for "over seven years".

The point I am making is that when the trial court was handing down the sentences, it had not been told about the duration which the applicant had had a clean driving licence. In other words, the trial court did not know whether the applicant had driven for 7 or 10 years, without ever having had an accident.

Therefore, the trial court cannot be faulted for not taking into account information which was not made available to it, at the time it was making its decision.

Nonetheless, I find, but without making a final determination, that because the applicant was a first offender, the probability of success in his appeal against the custodial sentence is real.

In the circumstances, the interests of justice dictate that I do grant bail pending appeal.

At the trial court, the applicant was granted a personal Bond of KShs.200,000/-, with one surety. At that stage, he was presumed innocent.

Right now, the applicant has been convicted. Therefore, the terms for his bail or bond must be enhanced. Accordingly, I order that the applicant be released on **cash bail of KShs.200,000/-, or a Personal Bond of KShs.300,000/- with two (2) sureties of like sum.**

**Dated, Signed and Delivered at Nairobi this 9<sup>th</sup> day of May, 2012**

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**FRED A. OCHIENG**

**JUDGE**