



REPUBLIC OF KENYA

High Court at Bungoma

Criminal Case 185 of 2012

JORAM NJOROGE NG'ANG'A.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

INTRODUCTION

The Application

[1] The Applicant filed an application by way of Notice of Motion under sections 356 and 357 of the Criminal Procedure Code and whose significant prayer is;

That the Honourable court be pleased to grant and admit the Appellant to bail pending the hearing and determination of the appeal

GROUND OF THE APPLICATION

[3] The application stands upon the affidavit sworn by the advocate for the Applicant and on the grounds contained in the application.

[4] The singular ground proffered which is most relevant in applications such as this, is that the appeal has overwhelming chances of success. The ground was elucidated upon by counsel for the applicant, when, during his submissions in court on 14th November 2012, associated himself fully with the submissions by Mr. Kibelion. Has the applicant satisfied the threshold provided by law for grant of such applications?

THE THRESHOLD

[4] The Court of Appeal, in the case of **DOMINIC KARANJA VS REPUBLIC [1986] KLR 612**, set out the conditions that must be satisfied in order for the court to exercise its discretion in granting bail pending appeal. Holding No 1 of that case is most apt in the circumstances of this case that:

a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the Applicant of his liberty....

[5] The test is carried out as circumscribed by this court in the case of **BGM HC MISC CR APPEAL NO. 163 OF 2012** that;

... in determining whether the appeal has overwhelming chances of success, the court is not determining the appeal or confirming the success or otherwise of the appeal, but it is simply saying

that, from the material before the court for purposes of the application for bail only, there are high or overwhelming chances of the appeal to be successful.

[6] Accordingly, at this stage, I should not comment on the particular issues in dispute in the main appeal as Mr. Kibelion attempted to do, in order to avoid determining the appeal before it is argued by the parties.

[7] But I have considered all the arguments herein by both parties, and has meticulously perused the proceedings of the trial court together with the judgment thereof, and I am convinced the appeal has overwhelming chances of success.

I MAKE THE DECISION

[8] On that basis, I grant the applicant a bond in the sum of Kshs 500, 000 with one surety of the like amount until the appeal is heard and determined.

Dated, signed and delivered in open court this 19th day of November 2012

F. GIKONYO

JUDGE

In the presence of:

Alusa- court clerk

Mr. Onyando for Applicant

Mr. Kibelion for Respondent

F. GIKONYO

JUDGE