



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**Criminal Appeal 100 of 2010**

KENNEDY KIGORWE MWITHIGA ..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

**RULING**

The appellant was convicted of causing death by dangerous driving contrary to section 46 of The Traffic Act Cap 403. He was convicted on his own plea of guilt. On being convicted, he was sentenced to 2 years imprisonment. The appellant has filed an appeal against conviction and sentence. He has now filed an application dated 18<sup>th</sup> may 2010 whereby he seeks that he be released on bail pending the determination of this appeal. It was argued on behalf of the appellant that he was sickly and was suffering in jail. His wife swore an affidavit attaching records of the appellant at the hospital which she stated showed that he suffers from epilepsy. Illness per se is not a basis for granting bail pending appeal. This was clearly stated in the case **Dominic Karanja Vs. Republic** [1986] KLR. However, the appellant's counsel argued that the learned magistrate on convicting the appellant on his own plea of guilt was informed of previous conviction of the appellant and that led him to sentence the appellant to 2 years imprisonment. It was however argued that the appellant was charged with two different criminal matters for offences that were of the same transaction. It was argued by the appellant's counsel that there seemed to be some orchestration by the prosecution in charging the appellant in two different criminal matters for an offence committed at the same time with a view to ensuring he was given jail sentence. The learned state counsel for the respondent opposed the application for bail on the basis that the appellant had admitted the offence. The learned state counsel further stated that the court needed to bear in mind that a life was lost as a result of the offence committed by the appellant. I have considered those submissions and I am of the view that bearing in mind the principle used by courts when considering an application such as this one that this appellant should be granted bail pending appeal. That principle was set out in the case **Dominic Karanja Vs. Republic** (supra) where it was held as follows:-

***“The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.*** Accordingly, and bearing in mind that indeed the appellant was convicted on his own plea of guilt I order that the appellant be released from custody on his own bond of Kshs. 150,000 and one surety of similar amounts. The matter since the appellant will be on bail will be mentioned before court on 29<sup>th</sup> November 2010.

Dated and delivered at Meru this 18<sup>th</sup> day of June 2010.

**MARY KASANGO**  
**JUDGE**