



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**

**Criminal Appeal 108 of 2006**

**HOSEA KAMANDE GATHURA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

The applicant herein was convicted on 14<sup>th</sup> November, 2006 in Kitale SPM Traffic Case No. 1659 of 2006. The Senior Principal Magistrate, Mrs. Wilbroda Juma, upon the said conviction for the offence of causing death by dangerous driving sentenced him to two years imprisonment and disqualified him from driving for two years, after serving the sentence.

Being aggrieved with the said conviction and sentence, the applicant lodged a Petition of Appeal on 16<sup>th</sup> November, 2006. He has now made the present application for inter alia the following orders:-

- (a) That this Honourable Court be pleased to admit the Applicant to bail pending the hearing and determination of this appeal.
- (b) That there be a stay of the Order disqualifying the Appellant from driving pending the hearing and determination of this appeal.

The application is made under the provisions of Section 357 of the Criminal Procedure Code. The Applicant contends that:-

- (i) The appeal has overwhelming chances of success.
- (ii) He is a man of good character.
- (iii) The term of imprisonment of 2 years may be fully served if he is not admitted to bail, given the workload of this Honourable Court.
- (iv) The appellant suffers from acute arthritis and his condition worsens when exposed to cold conditions.
- (v) He is under medication.

(vi) Unless released to bail the Applicant is likely to lose his job.

The application was opposed by the Respondent, the State which argued that:-

(i) The appeal has no chances of success.

(ii) The Appellant was convicted on his own plea of guilty.

(iii) There are no exceptional circumstances that justify admission to bail.

(iv) There is no proof of his poor health or medical condition.

(v) Under the provisions of Section 46 of the Traffic Act, there is no provision for sentence of fine. The maximum sentence is 10 years imprisonment.

(vi) The Law allowed the trial Magistrate to cancel the Appellant's driving licence for a period of upto 3 years. That the disqualification or cancellation of the driving licence for 2 years was not excessive in the circumstances.

I have carefully considered the application before me together with the submissions by counsel.

The principles to be considered in an application for bail pending appeal were succinctly laid down in **RAGHBIR SINGH LAMBA –V- R (1958) E.A. 337 at P. 338. Spry, Ag. J.** held:-

**“ ..... where a person is awaiting trial, the onus of proving guilt is on the prosecution and consequently the onus on the prosecution of showing cause why bail should not be allowed. On the other hand, when a person has been convicted, the onus is on him to show cause why the conviction should be set aside and similarly the onus is on him to show cause why as a convicted person he should be released on bail. If that is so, it follows that the reasons must be exceptional, otherwise bail would be granted in the majority of cases, which would clearly offend against this principle.”**

I intend to apply the aforesaid principles in deciding this application. The Appellant was convicted on his own plea. His appeal shall be heard on merit. On the face of the record, there is nothing to show at this stage that the trial Magistrate misdirected himself in convicting the Appellant and in the sentence. The sentence is provided for by the law.

The character of the appellant is not relevant in considering this application. Even a bishop is capable of committing the offence of dangerous driving. The fact that the Appellant may serve a substantial portion of the sentence by the time the appeal is heard is a consideration this court can take into account. However, it is my view that the present appeal is a short one and the proceedings are ready. It can be heard in the next three months. The Appellant's alleged medical condition is not supported by any medical evidence. The claim that he is likely to lose his employment is not an exceptional circumstances to warrant the grant of bail.

In the light of all the foregoing, I do hereby dismiss the application.

Dated and Delivered at Eldoret on this 18<sup>th</sup> day of January, 2007.

**M. K. IBRAHIM**

**JUDGE**