



**REPUBLIC OF KENYA**

**HIGH COURT OF AT NAIROBI (MILIMANI LAW COURTS)**

**Criminal Appli 401 of 2007**

**GEORGE NGUGI KAMAU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Before me is a Chamber Summons dated 8<sup>th</sup> June 2007 filed by M/S Omosa & Company advocates on behalf of the applicant GEORGE NGUGI KAMAU. The application is purported to be brought under section 356 and section 357 of the Criminal Procedure Code (Cap. 75 Law of Kenya). It seeks for the following orders that –

- 1. the application be certified as urgent.**
- 2. The appellant (applicant) be admitted to bail pending the hearing and determination of the appeal.**

The application has several grounds on the face of the

Chamber Summons. It is also supported by the affidavit of the applicant sworn on 8<sup>th</sup> June 2007. I certified the application as urgent.

At the hearing of the appeal, the applicant was represented by Mr. Odhiambo, while the state was represented by Mrs. Kagiri.

Learned Counsel for the applicant submitted that the applicant had already filed an appeal and there were overwhelming chances of success in the appeal. Counsel contended that there were many contradictions in the proceedings. The magistrate did not evaluate the evidence. The sentence was also based on speculation. Counsel also submitted that if the applicant was left to serve the prison term imposed he would lose his job.

Learned State Counsel, Mrs. Kagiri, opposed the application. Counsel contended that the applicant has not demonstrated that the intended appeal had overwhelming chances of success, nor has he demonstrated any exceptional circumstances. In counsel's view, all the issues raised only showed that the appellant had an arguable appeal.

Learned counsel for the applicant, in response submitted that the applicant should not be made to suffer because of an erroneous judgment.

I have considered the application and the submissions of both counsel for the parties. In DOMINIC KARANJA –vs- REPUBLIC [1986] KLR 612, the court stated –

**“..... The most important issue was that the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant consideration would be whether there were exceptional or unusual circumstances”.**

Therefore for an applicant in an application for bail pending appeal to succeed, he must demonstrate that the intended appeal has overwhelming chances of success, either on conviction or sentence or both. The arguments put across by the counsel for the applicant on conviction, in my view, merely go to show that the appeal is an arguable appeal rather than that it has overwhelming chances of success.

On sentence, the appellant was sentenced to –

- (i) Kshs. 5000 fine in default 5 months imprisonment.
- (ii) To serve five months imprisonment.
- (iii) His driving Licence cancelled for one year.

Counsel for the applicant contends these are three sentences

for the same offence. I have perused the section under which the appellant was charged which is section 47(1) of the Traffic Act. The section actually provides for the three sentences, and they may be meted by a trial court together. The only thing I find is that the magistrate meted the maximum sentence for the offence for a first offender. In my view, there are overwhelming chances of success on sentence . For that reason, I will allow the application and grant the following orders –

1. The applicant should be released on his cash bail of Kshs.10,000/=
2. Upon release, the applicant will attend mention of the pending appeal before the Deputy Registrar (High Court Criminal Division Nairobi) every after 45 days until the appeal is heard and determined. The first mention will be on 24/8/2007.

Orders accordingly.

Dated and delivered at Nairobi this 11<sup>th</sup> day of July 2007.

**George Dulu**

**Judge**

**In the presence of –**

Mr. Odhiambo for applicant

Mr. Gateru

Eric - court clerk