



**Mwangi v Republic (Criminal Appeal E0143 of 2023)
[2024] KEHC 168 (KLR) (Crim) (18 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL APPEAL E0143 OF 2023**

**LN MUTENDE, J
JANUARY 18, 2024**

BETWEEN

HANNAH NJERI MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. Hannah Njeri Mwangi, the Applicant, through an application dated May 12, 2023 seeks bail pending appeal following conviction and sentence in JKIA Criminal Case No. E073/2021. The applicant was charged following allegations of Store breaking and stealing contrary to Section 306A of the [Penal Code](#).
2. According to the judgment of the lower court, the applicant faced accusation jointly with two others of breaking into a store located at Catic and stealing fourteen pieces of distribution boards, 600*600 electric lighting fittings, fifty-six pieces of air conditioning outlets and dumpers all valued at Ksh. 4,512,000/- the property of China Jiangxi International Company. They were found guilty and accordingly convicted.
3. The application is premised on the grounds that:

The Applicant has lodged an appeal against the judgment and sentence of the lower court; the nature of sentence, if successful the appeal will be rendered nugatory; the applicant has attended court when required and will continue to do so if released on bail; and, that she is a mother of two (2) children who are suffering and a sole bread winner of the family hence needs to fend for them.
4. The application was disposed through written submissions. The Applicant submits that the law on bail pending appeal involves exercise of judicial discretion which must be exercised judiciously. That



chances of success of the case is supported by the fact that the appeal raises vital points of law with overwhelming chances of success, and, the applicant fully complied with the bail terms and conditions as granted by the trial court until conviction.

5. That the applicant is of good character, a first offender and the offence she was convicted of did not involve violence. That exceptional circumstances are the issue of being a single mother of two (2) children, a minor in grade 5, and, a college student in third year who depend on her solely.
6. The Respondent/State through Senior Prosecution Counsel, Mr. Robert Mutuma opposed the application. It is submitted that bail pending appeal is discretionary as the applicant has lost the presumption of innocence having been convicted and is serving a lawful sentence handed by a competent court. This calls upon the applicant to demonstrate warrant of grant of orders sought.
7. On the question of likelihood of success of the appeal, reliance was placed on the case of *Dominic Karanja vs Republic* (1986) KLR 612 where it was held that the most important thing is if the appeal has such overwhelming chances of success that there should not be any justification for depriving the Applicant the right to liberty. That the conviction and sentence were proper and legal and the applicant has not demonstrated any of the elements of the offence being challenged.
8. On the issue of the appeal being rendered nugatory, it is urged that there will be no inordinate delay.
9. I have considered rival arguments. The provision of Section 357 of the *Criminal Procedure Code* enact that:
 - (1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:
10. I must point out that at an appellate stage the court deals with an offender who has been convicted where different principles apply as the person is already convicted; and, in the instant case sentence is being served. (See - *Masrani vs R.* (1960) EA 321).
11. The appellate court has discretionary power to grant bail pending appeal, however the applicant must demonstrate that: his appeal has high chances of success; his case is exceptional; and, he is likely to serve the sentence during the pendency of the appeal.
12. The conditions are read disjunctively and courts have focused on the proof of exceptional circumstances in the appellant's case as a material ground.
13. In the case of *Jivraj Shah vs Republic* [1986] eKLR the Court of Appeal laid down the principles as follows;
 - “(1) The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.
 - (2) If it appears *prima facie* from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.



- (3) The main criteria is that there is no difference between overwhelming chances of success and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the points to be argued.”

14. The *Bail and Bond Policy Guidelines* provides that:

“The burden is on the convicted person to demonstrate that there is an overwhelming chance of success.”

(See page 27 paragraph 4.30)

15. The contention herein is that the applicant is of good character and a sole bread winner of her family. In the case of *Dominic Karanja vs- Republic* (*supra*), the court held thus:

“(a)

(b) The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners;

(c) A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal;

(d)

16. Obviously, reasons given do not suggest that the appeal has a likelihood of succeeding. It is not demonstrated at all, and, as afore-stated reasons given do not amount to exceptional circumstances.

17. Whether the sentence may be served before the appeal is determined. No evidence of the sentence imposed was availed for the court’s consideration. And the submissions did not expound on the issue.

18. The upshot of the above is that the applicant has not demonstrated grounds for granting bail pending appeal, therefore, the application is dismissed.

19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 18TH DAY OF JANUARY, 2024.

L. N. MUTENDE

JUDGE

In the presence of:

Mr. Gatobu Inoti for Appellant/Applicant

Mr Mongare for ODPP

Court Assistant - Habiba

