



REPUBLIC OF KENYA



**Motari v Republic (Criminal Appeal E018 of 2024)
[2024] KEHC 8981 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8981 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E018 OF 2024
WA OKWANY, J
JULY 11, 2024**

BETWEEN

GEOFFREY OSINDE MOTARI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant herein was convicted for the offence of being in possession of alcoholic drinks contrary to Section 27 (1) (b) as read with Section 27 (4) of the [Alcoholic Drinks Control Act](#) No. 4 of 2010. He was subsequently sentenced to pay a fine of Kshs. 207,000 or in default to serve 1-year imprisonment.
2. He appealed against the conviction and sentence and also filed an Application dated 19th June 2024 that is the subject of this ruling. He seeks orders to be released on bail pending appeal on the basis that his appeal has overwhelming chances of success and that he is the sole breadwinner for his 6 school-going children.
3. Mr. Chirchir, Learned Counsel for the Respondent, did not oppose the Application.
4. Section 357 of the [Criminal Procedure Code](#) stipulates as follows: -

357. Admission to bail or suspension of sentence pending appeal

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:

Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the



High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.

2. If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.
 3. The Chief Justice may make rules of court to regulate the procedure in cases under this section.
5. In the case of *Jiv Raji Shah v R* [1966] KLR 605, the principle considerations for granting bail pending appeal were stated 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 face 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.”
6. In the instant case, I note that the Respondent did not oppose the Application and noted that the appeal is likely to succeed as it raises substantial points of law. There is also the likelihood that the Appellant will have served his entire sentence or a substantial part thereof if the orders sought are not granted.
7. In conclusion, I find that the Application is merited and I therefore allow it and direct that the Applicant shall be released on cash bail of Kshs. 10,000/= pending the hearing of his appeal.
8. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 11TH DAY OF JULY 2024.

W. A. OKWANY

JUDGE

