



**Ragui v Republic (Criminal Appeal E036 of 2024)
[2024] KEHC 7976 (KLR) (2 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 7976 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E036 OF 2024**

DR KAVEDZA, J

JULY 2, 2024

BETWEEN

NEWTON KIGERA RAGUI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for bail pending appeal from the conviction and sentence delivered by Hon. Murage (PM) on 3rd May 2024 at Kibera Chief Magistrate's Court Criminal case no. 366 of 2019 Republic vs Newton Kigera Ragui)

RULING

1. The applicant was charged and after a full trial convicted for the obtaining money by false pretences contrary to section 313 of the Penal Code. He was sentenced to serve three (3) years imprisonment. Being dissatisfied with the decision, he filed a petition of appeal.
2. Simultaneously, he filed a notice of motion dated 12th June 2024, seeking her release on reasonable bail and/or bond pending the hearing and determination of her appeal. The application is premised on the grounds on the face thereof which are reiterated in the supporting affidavit sworn by the applicant's advocate of a similar date of a similar date. They are that the appeal has overwhelming chances of success. The appellant will have served a substantial part of the sentence. He was admitted to bail before the trial court and did not abscond. He undertakes to abide by the terms set by the court.
3. The respondent did not file a response to the application.
4. I have considered the application, the petition of appeal and the applicable law. The issue that arises for determination is whether the applicant has met the threshold for the grant of bail for pending appeal.
5. The provision of law that applies to bond/bail pending appeal is section 357 of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides as follows:



- (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:
6. The principles for granting bond pending an appeal were reiterated in the case of *Jivraj Shah v Republic* [1986] KLR 605 which 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 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 are 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.”
7. In the case of *Chimambhai v Republic* 1971 EA 343 J. Harris made another observation in such an application when he said;
 - “The case of an appellant under sentence of imprisonment seeking bond lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely, the presumption of innocence, but nevertheless the law of today frankly recognizes, to an extent at one time unknown, the possibility of the conviction being erroneous or the punishment excessive, a recognition which is implicit in the legislation creating the right of appeal in criminal cases.....”
8. Under Article 49 of the *Constitution of Kenya* an accused person who is facing a criminal charge has a right to bond because he is presumed to be innocent till proven guilty, unlike a case where one is already convicted.
9. I have carefully examined the grounds of appeal raised by the applicant. On the aspect of demonstration of exceptional or unusual circumstances, the court observes that the applicant has not demonstrated any unusual or exceptional circumstances to warrant the grant of bond pending appeal.
10. The appellant also argued that the appellant's appeal is likely to be determined after the sentence is served. The appellant was sentenced to three years imprisonment. The applicant's apprehension, as I understood it is that the appeal will take a long to be heard.
11. Having carefully considered the application and perused the record of appeal in its entirety. In addition, this court has also considered the history of the trial at the lower court and take note that the appellant neither missed court nor interfered with witnesses. As to whether the appellant's appeal will be successful or not, this court's view is that this is a matter that can only be determined after the appeal has been canvassed. However, I am not satisfied that the said grounds disclose the existence of an



appeal with overwhelming chances of success. Whereas the appellant may succeed in arguing the said grounds at the hearing of the appeal, I am not satisfied that the chances of the appeal succeeding are overwhelming.

12. The most important fact that this court has taken into account is that the appeal may not be heard and determined to conclusion before the appellant has served a substantial part of her sentence. The modus operandi of this court, having taken judicial notice of the fact that judiciary secretaries are overwhelmed with typing bulky proceedings, is to call for untyped proceeding for purposes of handling applications for revision, miscellaneous applications and other interlocutory appeals. As I write this ruling, the proceedings of the subordinate court are yet to be typed hence a certified record of appeal is not ready. In the *Chimambai v Republic* (*supra*) it was held that anticipated delay in the hearing of the appeal together with other factors may be grounds for grant of bail pending appeal.
13. For the above reasons, I am inclined to consider the applicant's application favourably. I note that the applicant was admitted to a cash bail of Kshs. 50,000 by the trial court. The amount is yet to be refunded.
14. Consequently, I hereby admit the applicant/appellant to a cash bail of Kshs. 50,000. The amount held by the lower court shall not be refunded until the appeal is heard and determined.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 2ND DAY OF JULY 2024

D. KAVEDZA

JUDGE

In the presence of:

Mr. Bosire for the Applicant/Appellant

Mr. Mutuma for the Respondent

Naomi Court Assistant

