



**Kinyanjui v Republic (Criminal Appeal E008 of 2024)  
[2024] KEHC 10949 (KLR) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10949 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL APPEAL E008 OF 2024  
AK NDUNG’U, J  
SEPTEMBER 16, 2024**

**BETWEEN**

**PETER KINYANJUI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Application before me is the Notice of Motion dated 15<sup>th</sup> April, 2024 and filed in court on 23<sup>rd</sup> April, 2024 seeking orders:
  - i) Spent.
  - ii) That at the hearing of the application, this Honourable Court be pleased to admit the Appellant, Peter Kinyanjui Njoroge on bail pending appeal upon such terms as may be just.
  - iii) That at the hearing of this application this Honourable Court be pleased to grant such other or further orders as may be just.
2. The application is supported by the affidavit of Haron Njoroge, the younger brother to the Applicant herein who purports to have authority from the Appellant to instruct an advocate on his behalf and lodge an appeal.
3. The gist of which is that the Applicant was charged and convicted of the offence of stealing by servant contrary to section 281 of the Penal Code in Count I, and Four other counts of Forgery contrary to section 349 of the Penal Code. He was convicted and sentenced to serve 4 years imprisonment for Count I and 3 years for Counts 2 - 4. The deponent avers that if the Appellant is admitted to bail pending appeal, he will honour and respect any and all court summons served him and that he verily believes that the Appellant’s appeal has high chances of success and is afraid that before the main appeal is heard and determined the Appellant may have served his term in full or substantially.



4. The application is opposed and Esther Kimani, a Senior Principal Prosecution Counsel has sworn a replying affidavit in response thereto.
5. She depones that grant of bail pending appeal is discretionary as the Applicant has been found guilty and the principle of presumption of innocence no longer applies. Further, that the Applicant has not demonstrated any peculiar and exceptional circumstances to warrant the grant of the orders sought.
6. Counsel adds that the Appellant was sentenced to a seven-year sentence and there is no likelihood that the Applicant will have served a substantial part of the sentence before the appeal is heard.
7. Bond or bail pending Appeal is provided for under Section 357 of the Criminal Procedure Code (CPC). It provides;-

“ 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.”

8. It is clear that this court has powers to grant bond/bail pending Appeal.
9. The principles for the grant or denial of bond/bail pending Appeal were set out in *Jivraj Shah vs Republic*, *Ademba vs Republic* and *Dominic Karanja vs Republic*.
10. Thus the considerations for the court to grant or deny bond pending appeal are;-
  - a. That the Appeal has overwhelming chances of success.
  - b. The previous good character of the Applicant.
  - c. The existence of exceptional or unusual circumstances.
  - d. The sentence or substantial part of it will have been served by the time the Appeal is heard.



11. I have considered the Appeal filed. Evidently, it does not raise any substantial or weighty point of law. It is essentially founded on facts and the findings of the trial court. The lower court record was not availed to this court and it is not possible to determine the probability of success of the appeal.
12. In any event at this stage, the court ought to be cautious not to try and determine the Appeal. This should await the appropriate time.
13. There are no exceptional or unusual circumstances that would necessitate the grant of the orders sought.
14. Whereas the previous good record of the Applicant is a ground for consideration, the fact that the Appellant honoured bail terms at the trial court is not sufficient to warrant the grant the orders sought.
15. It must be remembered that during the trial, the Applicant was presumed to be innocent. Right now he has been convicted by a Court of competent jurisdiction. Thus, the application of Article 49 (1) (h) of *the Constitution* does not apply to the Applicant as the Applicant has no benefit of the presumption of innocence and the grant of bail in the present circumstances is discretionary.
16. I take judicial notice of this court's diary and the ability to have the appeal expedited. There is no likelihood therefore that the Applicant will have served a substantial part of the impugned sentence.
17. With the result that the application falls far short of achieving the legal threshold for the grant of bail pending appeal. The application has no merit and is dismissed.
18. The Applicant to proceed to prepare the Record of Appeal.
19. The Lower Court filed to be availed forthwith.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF SEPTEMBER, 2024**

**A.K. NDUNGU**

**JUDGE**

