



**Muthecha v Republic (Criminal Appeal E116 of 2024)  
[2024] KEHC 10583 (KLR) (Crim) (6 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10583 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL APPEAL E116 OF 2024  
AM MUTETI, J  
SEPTEMBER 6, 2024**

**BETWEEN**

**PETER THUTHO MUTHECHA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant in this matter was charged before the Chief Magistrate Court Makadara in Traffic Case No E4026 of 2024. The charge read: “failing to comply with Terms and conditions for Transport of special loads as provided for under the Permit Contrary to Section 20 (c) of the [East African Community Vehicle Load Control \(Special Loads\) Act](#) as read with Section 21 (1) of the East African Community Vehicle Load Control Act 2016.”

He was convicted on his own plea of guilty.

2. The learned Honourable Magistrate sentenced him to a fine of Kshs 3,000 USD and in default one (1) year imprisonment.
3. It is against that decision that he has filed Criminal Appeal No E116 of 2024.

**Analysis**

4. By way of a Notice of Motion dated 25<sup>th</sup> August 2024, the applicant seeks bail pending appeal.
5. It is his contention that the plea of guilty was equivocal since the prosecutor did not present the facts of the matter to the court and as such he was prejudiced.



6. According to the applicant he was not warned by the court of the severity of the sentence that the offence would attract thus in admitting the offence he was not sufficiently informed to enable him make a conscious decision as to the nature of plea to enter.
7. The applicant maintains that the failure by the magistrate to allow him to mitigate further denied him the opportunity to plead for a lenient sentence contrary to the law.
8. The applicant through Ms Gaita Advocate argues that his appeal has overwhelming chances of success and he should therefore be granted bail pending the hearing of the Appeal.
9. In support of her arguments Ms Gaita has cited the cases of *Pandya v Republic* [1957] EA 336 and *Francis Karioko Muruatetu v Rep* [2021] eKLR on the need to exercise diligence at the time of recording a guilty plea and the need for courts to ensure that due process is accorded to all accused persons in the course of trial since the right to a fair trial is non derogable under Article 25 and 50 of the *Constitution* of Kenya.
10. Mr. Chebii for the state relied on his grounds of opposition and urged the court to find that the plea of guilty was unequivocal and thus the conviction and sentence was proper.
11. Mr. Chebii submitted further that the decision on whether or not to grant bail pending appeal is discretionary thus he left the matter to court.
12. He also argued that there were no special circumstances to warrant grant of bail pending Appeal.
13. The importance of recording a plea of guilty with a great measure of caution need not to be emphasized.
14. A court must be satisfied that the accused understands the charge and the attendant consequences to pleading guilty to the same.
15. The record before the lower court in this matter is a single page in what appears to be a template.
16. Upon perusal of the same I note that the record indicates that the prosecutor informed the court that “Facts as per charge sheet”.
17. It is not indicated whether the facts on the charge sheet were read to the Applicant.
18. All that the record indicates is a tick by the court against the words:-  

“ Accused - They are correct.”
19. Whereas one may understand that the court due to pressure of work may adopt simplified methods of ensuring that matters proceed expeditiously, the trial court must know that in the deployment of such simplified system of conducting trials, the court must protect the accused’s right to a fair trial.
20. The right to a fair trial must never be sacrificed at the altar of convenience.
21. In determining the present application this court is guided by the case of *Jivraj Shah v Republic* [1986] KLR 605 which laid down the principles in granting bail pending appeal as follows;-
  - a. The principal consideration in an application for bond pending appeal is the existence of except exceptional or unusual circumstances upon which the court of Appeal can fairly conclude that it is in the interest of justice to grant bail.
  - b. 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.

- c. 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”.
22. I have considered the arguments by counsel for both parties and I must say the applicant’s application meets the test for the grant of bail pending appeal.
23. In my view, the summary nature of the trial rendered it susceptible to review an appeal. The Legal issues raised as to the regularity of the procedure adopted by the court, are weighty and the appeal therefore has overwhelming chances of success.
24. It is an appeal that emanates from a process that by all standards cannot be said to have met the requirements of a fair trial.
25. To state “facts as per charge sheet” is to presume the accused knows the facts set out in the charge sheet.
26. It is not the business of a trial court to presume matters. Facts must be read out and explained to an accused person in a language he understands and the actual words used by the accused in response thereto captured.
27. The trial court must ensure that an accused person fully understands what offence he faces and the sentence that he is likely to suffer.
28. The accused must be explained the facts in sufficient detail more so where the language used by the accused is different from the language used in the body of the charge sheet.
29. The record in this matter reads:-
- “ Interpretation English/Kiswahili”. It therefore follows that the accused would have required the facts in the charge sheet to be read out in Kiswahili.”
30. The record does not reflect that, thus the court cannot assume that indeed the facts were read and explained in Kiswahili.

### **Determination**

32. In the end I find and hold that the applicant’s application for Bail pending appeal has merit. The same is hereby allowed.
33. The applicant shall be released from custody on a Bond of Kshs 150,000/= plus 1 surety of similar amount or an alternative Cash Bail of Kshs 50,000/=.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF SEPTEMBER, 2024.**

**HON. A.M MUTETI**

**JUDGE**

In the presence of:

Kiptoo: Court Assistant



Mr. Chebii for the Respondent

Gaita for the Applicant

