



**Njue v Republic (Criminal Appeal E003 of 2024)  
[2024] KEHC 12231 (KLR) (Crim) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12231 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL APPEAL E003 OF 2024  
LN MUTENDE, J  
OCTOBER 7, 2024**

**BETWEEN**

**PETER MUCHANGI NJUE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Peter Muchangi Njue, the applicant, approached this court seeking orders thus:
  - (a) Spent
  - (b) Spent.
  - (c) This Honourable Court be pleased to grant the Applicant Bail pending the hearing of the Appeal filed before this Honourable court.
  - (d) The costs of this Application be in the cause.
2. The Respondent filed grounds of opposition where it was urged that:
  1. The application lacks merit, is misconceived and unsubstantiated.
  2. The application is an abuse of the court process since the applicant was properly convicted before the trial court and the prosecution did discharge its burden of proof beyond reasonable doubt.
  3. The applicants have not demonstrated any special or unusual circumstances to warrant him to be granted bail pending appeal.
  4. The application lacks merit and the same should be dismissed in its entirety.



3. When the matter came up at the outset, the respondent did not oppose grant of leave to appeal out of time. That prayer having been spent, now the applicant seeks release on bail pending appeal. The application is premised on grounds that the appeal is arguable, plausible and has high chances of success considering that the applicant was convicted based on circumstantial evidence, with the magistrate having not considered several documents produced by expert witnesses.
4. That the applicant is not a flight risk having attended court faithfully during trial; and, the respondent will not be prejudiced in any way by the application being allowed.
5. The application was canvassed through written submissions. It is urged by the applicant that the two main conditions for grant of bail pending appeal set out in *Charles Owonga Aluoch v DPP* (2015) eKLR were:
  - a. The appeal is likely to be successful on account of some substantial point of law to be argued.
  - b. The sentence or substantial part of it will have been served by the time the appeal is heard.
6. And, the main criterion being that the appeal has overwhelmingly chances of success as re-affirmed in the case of *Dominic Karanja v. Republic* (1986) KLR 612 where the court opined that;
  - “(a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;”
7. That the applicant was convicted on an alternate charge of Handling stolen goods contrary to Section 332(1) 92) of the *Penal Code*. That evidence adduced pointed to the applicant having no prior knowledge of the fact that the money stolen was deposited into his account. That it was admitted by a certified ethical hacker that the applicant had no way of knowing that money was credited in his account.
8. That the sole reason for his conviction was based on the fact of the applicant having not reported loss of his debit card and that he applied and was issued with the ATM card. That the applicant was not linked with withdrawals of the money. That the case was not proved to the required standard; yet, the applicant risks serving a sentence of 5 years less the period considered under the doctrine of remission which will be an injustice to the applicant.
9. In response, the respondent who opposes the application submits that the applicant has not demonstrated any exceptional circumstances that would require granting of bail pending appeal.
10. On the question of whether the appeal has a likelihood of success, it is urged that evidence adduced is cogent and proves the prosecution case beyond doubt. That despite the sentence having been based on circumstantial evidence, all required ingredients were proved.
11. On the issue of the sentence being served before the appeal is heard, it is argued that the court is handling 2024 matters hence there will not be delay in hearing of the matter.
12. I have considered rival arguments put forth. Section 357 of the *Criminal Procedure Code* (CPC) provides thus:
  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.
13. Principles of granting bail/bond pending appeal were stated in the case of *Jivraj Shah v. Republic* (1986) KLR 606 thus:

- “(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.”

14. In *Dominic v. Republic* (1986) KLR 612, the court stated that:

- “(a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;
- (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) .....



15. The applicant herein was indicted following an incident where Family Bank was hacked and Ksh. 294,800,003/- withdrawn. One of the beneficiaries was the applicant as his debt card was loaded with Kshs 20,000,000/-. Having been convicted and sentenced, he is serving a lawful sentence. In Mutua v. Republic (1988) KLR 497, the Court of Appeal Stated that:

“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal. It is not wise or to set the applicant at liberty either from the point of view of his welfare or of the state unless there is a real reason why the court should do so.”
16. It is argued that the applicant is not a flight risk. Notably, the applicant having been convicted is no longer innocent as he has been proven guilty. Therefore, although the court has discretion to grant bail pending appeal, it is duty bound to consider various factors. It is not a question whether compelling reasons exist requiring the individual to be granted bail or be incarcerated as required by Article 49(1) (h) of the Constitution.
17. As enunciated by caselaw, the applicant must demonstrate existence of exceptional reasons that would call for his release on bail/ bond.. In the instant case two grounds have been put forth:
  - (a) That the sentence will be served before the applicant’s appeal is heard and determined. As correctly pointed out by the respondent, appeals for the year 2024 are being heard. It is a matter of fastpacking the same. The sentence meted out is five (5) years imprisonment. Even if part of the prison sentence is cancelled/reduced, in case the applicant turns out to be of good behavior; the sentence will not be served before the appeal is heard and determined.
18. On the issue of the appeal having overwhelming chances of succeeding; submissions by the applicant purport to argue the substantive appeal, yet, the court cannot delve into the merit of the matter that resulted into the conviction at this stage. The trial court considered evidence put before it prior to reaching the decision to convict. This will be interrogated at the appellate stage.
19. In the result, I find the applicant having not demonstrated existence of overwhelming chances of the appeal succeeding. Therefore, the application is not meritorious. Accordingly, it is dismissed.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 7<sup>TH</sup> DAY OF OCTOBER, 2024.**

**L. N. MUTENDE**

**JUDGE**

