



**Chalete v Republic (Miscellaneous Criminal Application E363 of 2022)
[2023] KEHC 2691 (KLR) (Crim) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2691 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E363 OF 2022
JM BWONWONG'A, J
MARCH 8, 2023**

BETWEEN

GEORGINA WAGUMBA CHALETE APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for bail/bond pending appeal against the judgement delivered by Hon L O Onyina (C M) delivered on October 21, 2022 in JKIA Chief Magistrate Court criminal case no E009 of 2021)

RULING

1. The applicants were tried and convicted by the trial court for the offence trafficking in narcotic drugs contrary to section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act*, No 4 of 1994. They were sentenced to serve 7 years imprisonment.
2. They have appealed against their conviction and sentence before this court. Simultaneously, she filed a chamber summons dated November 30, 2022, seeking to be released on bail pending the hearing of her appeal. The application is brought pursuant to section 357 (1) of the *Criminal Procedure Code* (cap 75) Laws of Kenya. It is grounded on the facts on the face of the notice of motion and is supported by an affidavit sworn by the applicant's advocate of a similar date.
3. The grounds raised are as follows. The applicant intends to prefer an appeal against her conviction and sentence. She will have served a substantial portion of her prison term, if she is successful in her appeal unless the orders sought are granted. The applicant has previously complied with the conditions imposed by the lower court thus making him a candidate for the grant of the orders sought. She has an arguable appeal with high chances of success.



4. She is a young mother of two children aged 4 and 7 years, who solely depend on her.
5. She urges the court to grant similar bail/bond terms as those issued in the trial court.
6. In addition, Mrs Pamela Wandera who stood surety before the trial court is willing to stand surety during the pendency of the appeal.

The applicant's written submissions

7. Mr Ogutu, learned counsel for the applicant submitted that the appellant has enumerated a number of grounds of appeal, which he argued show that the appeal has a high chance of success. He submitted that the appellant is likely to serve a substantial part of his sentence before his appeal is heard.
8. Further, that the instant application has not been opposed, as such he should be granted the orders sought.

The respondent's written submissions

9. Mr Kiragu learned prosecution counsel submitted that the intended appeal lacks merits. Further, the applicant has not shown any exceptional circumstances to warrant her release on bail pending appeal. He urged the court to dismiss the application for lacking in merit.

Issues for determination

10. Having considered the application, the written submissions and the applicable law, I find that the issue for determination is whether the applicant has made out a case for the grant of the orders sought.

Analysis and determination

11. The principles that govern the grant of bail pending appeal are settled. These are the existence of exceptional or unusual circumstances, upon which the appellate court can fairly conclude that it is in the interest of justice to grant bail. Secondly the court must be satisfied that the appeal has high chances of success and that the sentence or a substantial part of it will have been served by the time the appeal is heard.
12. In the instant application, it is submitted that the appeal has high chances of success and that the appellant will have served a substantial part of his sentence, before the hearing of her appeal. I have carefully examined the grounds of appeal raised by the applicant. The rationale for considering the chances of success of the appeal were explained in *Somo vs R* [1972] EA 472 at page 480 as follows:

“There is little if any point in granting the application if the appeal is not thought to have an overwhelming chance of being successful, at least to the extent that the sentence will be interfered with so that the applicant will be granted his liberty by the appeal court. I have used the word “overwhelming” deliberately for what I believe to be good reason. It seems to me that when these applications are considered it must never be forgotten that the presumption is that when the applicant was convicted, he was properly convicted. That is why, where he is undergoing a custodial sentence, he must demonstrate, if he wishes to anticipate the result of his appeal and secure his liberty forthwith, that there are exceptional or unusual circumstances in the case. That is why, when he relies on the ground that his appeal will prove successful, he must show that there is overwhelming probability that it will succeed.”



13. In this case, I have considered the grounds of appeal raised in the petition of appeal. I have also considered the submissions of the applicant. I find that the applicant has not demonstrated that his appeal has high chances of success. He has also not demonstrated that she will have served a substantial part of his sentence by the time the appeal will be heard and determined.
14. In light of the foregoing, I find no merit in the applicant's application dated November 30, 2022 which is hereby dismissed for lacking in merit.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF MARCH 2023.

J M BWONWONG'A

JUDGE

In the presence of

Kinyua court assistant

Mr Ogutu for the 1st and 2nd applicants.

Ms Oduor for the respondent

