



**Wangila v Republic (Petition E022 of 2023)
[2023] KEHC 23112 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PETITION E022 OF 2023
REA OUGO, J
SEPTEMBER 21, 2023**

BETWEEN

MOSES WAMUTIBI WANGILA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. Moses Wamutibi Wangila, the appellant/applicant, seeks to be granted bond pending appeal herein on such terms as the court deems fit. That costs be in cause. The notice of motion is dated the May 2, 2023 and is supported by the applicant's affidavit dated the May 2, 2023. He depones as follows; he was charged with the offence of grievous harm and convicted and sentenced to a custodial sentence. He is ailing and seriously on medication and may not survive the sentence if intervention is made. That the complainant and him are family members hence reconciliation may be achieved by granting a temporary relief of bond. That he has a large family who all rely on him for their daily livelihood. That he was not given an option of a fine yet the offence arose from a family dispute. That he has a good appeal against the conviction and sentence that was excessive and harsh.
2. Application was canvassed by way of written submissions. I have considered the said submissions.
3. In the case of *Jivraj Shah vs Republic* (1986) eKLR the Court of Appeal whilst considering whether to grant the applicant bail pending appeal stated as follows;-
 - "i. There must be in existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail.
 - ii. 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."

4. The grant of bond/bail pending appeal is at the discretion of the court. In the case of *Daniel Dominic Karanja vs Republic* [1986] eKLR, the court stated that the availability of sureties, ill health, suffering of a convict's family were not grounds for the granting of bail pending appeal.
5. Guided by the above authorities, the applicant/ appellant in this matter has not furnish this court with the proceedings of the lower court nor any grounds of appeal to consider if he has an arguable appeal which has overwhelming chance of success. He has also not tendered any medical report that he is so unwell or extremely sick that he will not survive the sentence as he claims. He has also not demonstrated that exceptional circumstances that warrant him being grant bail /bond pending appeal. The fact that he had a family that depends on him is not a reason for him to be granted bail/bond pending the hearing and determination of the Appeal. He also claims he is disabled. But there is no medical evidence to show that his disability is a challenge to him being in custody.
6. I am not persuaded that a suitable case for the court to exercise its discretion and grant the applicant/ appellant bond. Appeals in this court are heard expeditiously. The applicant to file an appeal if he has not done so. The application is declined. File is closed.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 21ST DAY OF SEPTEMBER 2023.

R.E.OUGO

JUDGE

In the presence of;

Moses Wamutibi Wangila /Applicant- Present

Counsel for the Applicant- Absent

Mr. Ayekha -For the Respondent

Okwaro -C/A

