



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL APPEAL NO. E009 OF 2020

ABDULLAHI SALAT ADAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before court is a Notice of Motion brought pursuant to Section 357 of the Criminal Procedure Code and dated the 1st of March 2021.

2. The application seeks for one substantive order; that the appellant be admitted to bail pending appeal.

The application is based on grounds that the appeal has an overwhelming chance of success as the trial court ignored the applicant's alibi and the evidence is riddled with contradictions; there has been a delay in the commencement of the appeal and there is apprehension that the appeal is likely to take long time.

3. The appeal was objected to by the state on grounds that the trial court analysed the alibi and the evidence levelled against the appellant; there were no contradictions as witnesses gave estimate of distance between them and the appellant and as such this cannot be a reason to grant bail.

4. The Appellant herein Abdullahi Salat Adan was charged with two counts, the 1st count was being in possession of a firearm without a license contrary to Section 4A (1) of the Firearm Act No. 2012. The particulars of the said offence are that on the 5th of February, 2019 at around 5.30 pm at Kanjara Trading Centre in Habaswein Sub-County within Wajir County the Applicant was found in possession of a firearm RPD machine gun S/No. PC 458 without a license.

5. The second count was being in possession of ammunitions without a license contrary to Section 4(2) of the Firearms Act No. 12. The particulars of the offence are that on the 5th of February, 2019 at about 5.30 pm at Kanjara Trading Centre in Habaswein Sub-County within Wajir County the Applicant was found in possession of fourteen (14) rounds of live ammunition 7.62 mm x 39 without a license.

6. The trial court found the appellant guilty of both offences, convicted him and sentenced him to five years on each count, the sentences were to run concurrently.

7. Bond pending appeal is not an automatic right as the appellant has a conviction hanging over his head.

8. The parameters of granting bail in such situations have been laid down. Section 357(1) of the Criminal Procedure Code provides as follows:

“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 shall be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”

9. In the case of **Jivraj Shah v R [1986] eKLR** the parameters for granting of bail were laid down as follows:

“(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 facie from the totality of the circumstances that appeal is likely to succeed 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.”

10. I have considered the application, grounds thereof and the accompanying affidavit. I have also considered submissions by the rival parties and indeed the proceedings of the Lower Court alongside grounds of appeal.

11. There has been no demonstration of any exceptional or unusual circumstances on this case nor demonstration that prima facie the appeal has an overwhelming chance of success. Nor that a substantial point of law will be argued on an appeal to militate towards granting of bail pending appeal.

12. Likewise, the argument that hearing of the appeal is likely to take long does not sail either. The proceedings of the lower court have been typed and as soon as a record of appeal is filed a date for hearing of the appeal may be fixed.

13. For the reason above the application is declined.

DELIVERED AND SIGNED AT GARISSA THIS 10TH DAY OF JUNE, 2021.

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ALI-ARONI

JUDGE