



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL APPEAL NO. E033 OF 2021

ANTHONY NJAU NDERITU..... APPLICANT/APPELLANT

VS.

REPUBLIC.....RESPONDENT/PROSECUTOR

RULING

1. **ANTHONY NJAU NDERITU** was convicted before the Chief Magistrate, Kiambu, for the offence of selling illicit brew contrary to **Section 15(1)** as read with **Section 15(2)** of the Kiambu County Government Alcoholic Drinking Control Act. He was sentenced to pay a fine of Kshs.1million and in default to serve two years imprisonment. He was aggrieved by that judgment and has filed this present appeal against his conviction and sentence. The appellant has presented to this Court a chamber summons application dated 18th May, 2021 seeking to be admitted to bail pending the hearing and determination of his appeal.

2. Appellant's application was not opposed by the **Director of Public Prosecutions**, (DPP) the respondent.

3. Section 357(1) of the Criminal Procedure Code provides that a person convicted or sentenced may be released on bail. That section is in following terms:-

“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.

4. In support of the application the appellant presented his affidavit in which he deponed that he has an arguable appeal with overwhelming chances of success; that prior to his conviction he was a farmer, buying and selling milk and also doing casual labour, which enabled him to provide for his young family. Further, that his school going children have been unable to resume school for lack of school fees in view of his incarceration. Appellant also stated he has a fixed abode at Kagongo, in Tinganga area. I am guided in the consideration of the present application by the Court of Appeal decision of **DOMINIC KARANJA VS. REPUBLIC (1986) KLR 612** as follows:-

“(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.”

5. Having considered the submissions on behalf of DPP and the appellant, I am of the opinion, on prima facie basis, that the appellant's appeal is not frivolous. Although the appellant cannot successfully rely on a residual assumption of innocence contained in **Article 50(2) (a)** of the Constitution and although bail pending appeal is a privilege rather than a right, I am of the view that there is basis in granting the appellant bail pending appeal.

DISPOSITION

6. I grant the following orders:-

(a) **Anthony Njau Nderitu** is granted bond of Kshs.500,000/= with one surety of similar amount pending the hearing and determination of this appeal.

(b) **Anthony Njau Nderitu** shall attend all mentions and hearings of this appeal.

(c) **Anthony Njau Nderitu** shall not leave the jurisdiction of this Court without this Court's permission

RULING DATED, SIGNED AND DELIVERED AT KIAMBU THIS 10TH DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Applicant/Appellant: present

For Appellant Ms. Fundi

Respondent: Mr. Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE