



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL APPEAL NO. E005 OF 2021

REPUBLIC.....PROSECUTOR

VS.

TIM JOHNSHON MUMO MUTHIANI.....ACCUSED

RULING

1. **TIM JOHNSON MUMO MUTHIANI** (appellant) was convicted before the Thika Chief Magistrate's court of four counts of causing death by dangerous driving, for the offence of reckless driving and six count for driving a motor vehicle on the public road while under the influence of alcohol. He has appealed against that conviction and his sentence before his Court. By his Notice of Motion application dated 18th February, 2021 the appellant seeks bail/bond pending the hearing and determination of his appeal.

2. In his affidavit in support of the application, appellant deponed that the appeal has overwhelming chances of success, that the prosecutor's evidence did not warrant his conviction, that he was denied opportunity to defend himself and that his sentence was too harsh. Appellant also stated that he had been released on bail, during his trial and while on bail he complied with the conditions of bail.

3. The application is opposed by respondent on the grounds that the application is misconceived because there is against the appellant a valid conviction by a competent court and on the ground that as consequence the appellant is devoid of presumption of innocence. Prosecution also submitted that the appellant does not have a right to bail in the absence of exceptional circumstances which appellant did not demonstrate.

ANALYSIS

4. I will begin by considering the provisions of **Section 357(1)** of the Criminal Procedure Code which provides admission to bail pending appeal 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 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.”

5. Director of Public Prosecutions (DPP) the respondent in this appeal was correct to submit that the appellant does not have the presumption of innocence in the light of his conviction. A discussion in a Canadian case **R. VS. FARINACCI 1992 CanLII 1136** considered the situation the appellant finds himself as follows:-

“The right not to be denied reasonable bail without just cause is rooted in the presumption of innocence, which is substantially spent by the conviction. Indeed, the presumption of innocence is spent by the verdict, be it a conviction or an acquittal. A conviction does not create a presumption of guilt. It constitutes a legal, conclusive finding of guilt. Like an acquittal, it is enforceable unless and until reversed. After a conviction, there is no presumption left, one way or the other. There is an enforceable finding of guilt.”

6. It was stated in local case **KIGORO MACHORO VS. REPUBLIC (2019)** that although a convicted person has right to appeal he loses a strong element for bail after conviction. The court while citing another case in **KIGORO MACHORO VS. REPUBLIC** (supra) stated:-

“9. In the case of CHIMAMBHAI V REPUBLIC 1971 EA 343, J. Harris made another observation in such an application when he said

‘The case of an appellant under sentence of imprisonment seeking bond lacks one of the strongest elements normally available to an accused person seeking bail before trial, namely, the presumption of innocence, but nevertheless the law of today frankly recognizes, to an extent at one time unknown, the possibility of the conviction being erroneous or the punishment excessive, a recognition which is implicit in the legislation creating the right of appeal in criminal cases...’”

7. I have carefully considered the trial court’s judgment and I find on prima facie basis that the present appeal does not have high chances of success. Having that in mind and the fact that appellant is not presumed innocent, the application for bail pending appeal is rejected.

DISPOSITON

8. The notice of motion application dated 18th February, 2021, for the reasons set out above is dismissed.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 3RD DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

For the appellant: Nzioka

For the respondent: Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE