



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL APPEAL NO 11 OF 2020

(Being an appeal arising from Kitale Chief Magistrate's Court Sexual Offence No. 153 of 2018 delivered by D.K. Mutai – RM)

BERNARD MAGINA MASINDE.....APPELLANT/APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. This is an application by the Applicant dated 13th February, 2020 in which he has prayed for bail pending appeal. In his supporting affidavit he has stated that he was a first offender and that he complied with the bond terms during the substantive hearing of the case at the lower court.
2. The Applicant has further attached some medical documents indicating that he suffers from the decease of the mind and that the incarceration shall worsens the situation. He stated that he was ready to comply with all the conditions set by this court.
3. The Respondent has filed grounds of opposition arguing that the appeal has got no chance of success and that the fact that the Applicant suffers from mental decease is not an exceptional circumstance. The state therefore argued that the application ought to be dismissed.
4. The grounds for granting bail pending appeal were well captured by the court in the case of **PETER HINGA NGATHO V. REPUBLIC (2015) eKLR** where the court stated as follows:

“Lastly counsel cited the case of Simon Mwangi Kirika vs Republic and stated that the appellant had satisfied the principles under which a court may grant bail pending an appeal as stated in the said case while citing the case of Jivraj Shah vs Republic which are: -

“i. The principal consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests 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.

iii. 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.”

5. This court need not rewrite the same save to state that the period meted against the applicant of five years is not that long and taking into consideration the courts diary and the usual backlog of matters, the Applicant may have served the entire or half of the period by the time the appeal is heard and determined regardless of the outcome.
6. It is appreciated that the Appellant conducted himself well during the period he was on bond and thus it's expected that he will not abscond and should attend court all through till the appeal is determined.
7. In the premises, the application is allowed as follows;

(a) The Applicant is hereby granted a bond of Kshs. 500,000 and or cash bail of kshs. 200,000.

(b) The Applicant shall at all times attend court during the subsistence of the appeal which in any event should be processed for hearing within the next 90 days.

(c) This matter be mention within the next 30 days from the date herein to confirm compliance with order (b) above.

8. Orders accordingly.

Dated signed and delivered in open court at Kitale this 2nd day of March, 2020.

H. K. CHEMITEI

JUDGE

2/3/2020

In the presence of:-

M/s Kagai for the Respondent

Mr. Ngeiywa for Appellant/Applicant

Court Assistant – Kirong

Ruling read in open court.