



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL NO. 55 OF 2020**

**JULIUS MATHEW.....APPELLANT/APPELLANT**

**-versus-**

**REPUBLIC.....RESPONDENT**

**RULING**

[1] In a Motion dated 27<sup>th</sup> July 2020 expressed to be pursuant to **Section 357 (1) of the Criminal Procedure Code CAP 75 Laws of Kenya** and **all other enabling provisions of the law**, the applicant herein sought to be released on bail/bond pending the hearing and determination of his appeal.

[2] The applicant was charged with the offence of threatening to kill contrary to **Section 223(1) of the Penal Code**. He was convicted and sentenced to five (5) years imprisonment in Githongo *Cr. Case No. 1522 of 2018*. Having been dissatisfied with this he has lodged this appeal which he contends it has high probability of success. He also argued that it may take long to have the appeal heard. And, given the nature of the sentence, the appellant is likely to serve the sentence before the appeal is heard, thus, rendering the appeal nugatory. It was also stated that the appellant is the sole bread winner and has small children to look after. He has always attended court and will always do so.

[3] The application was opposed by the respondent vide their grounds of opposition dated 18<sup>th</sup> August 2020. It is argued that the application is incompetent and lacks merit for the appeal is weak and does not have high chances of success since the prosecution proved their case beyond reasonable doubt. Moreover, the applicant has met no ground neither are their compelling reasons for the applicant to be granted bail pending appeal.

**Threshold for bail pending appeal**

[4] When it comes to an appellant who has been convicted and sentenced for a criminal offence, the Court of Appeal held in the case of **Jivraj Shah -vs- Republic [1986] KLR 605**, inter alia that:

**“1. 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.**

**2. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on an account of some substantial point of law to be urged and the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist.**

**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 the weight and relevance of the points to be argued.”**

[7] See also the case of **Dominic Karanja v. Republic [1986] KLR 612** where the Court of Appeal held that:

**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. (Emphasis added)**

**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.**

**d. Upon considering the relevant material in this case, there was no overwhelming chance of the appeal being successful.**

[5] I have perused the petition of appeal and documents produced in support thereof. I have also considered the arguments presented by parties. I should state that solemn promise that the appellant will not abscond is not sufficient to have him released on bail pending appeal. I do not find any exceptional circumstances in this case.

[6] Other than stating that the appeal has high chances of success, there was no attempt by the appellant to establish that fact or to point out one single most important element of their appeal that makes it to have a high chance of success. I will couple this with the argument that it may take time to hear the appeal. And, thus, given the nature of the sentence, he will have served the sentence by the time the appeal is heard. Courts are now efficient and appeals are heard very quickly. I do not think that he will have served a substantial part of the sentence by the time the appeal is heard. To avoid such eventuality, the court would ordinarily fast-track preparation of the record and assign the appeal a date for hearing of the appeal on the basis of priority. This practice is in line with the principle of justice in article 159 of the Constitution which commands that justice shall be administered without delay.

[7] Without pre-empting the outcome of the appeal, I find that the appellant has not shown his appeal has high chances of success. There are also no exceptional circumstances on which bail should be granted. Accordingly, I dismiss his application.

[8] I however direct the in-charge Githongo Law Courts to produce in this court the original as well as certified typed record of the trial court within 7 days of today. The DR to prepare the record immediately. This appeal shall be placed before the judge on 9<sup>th</sup> November 2020 for directions on the hearing of the appeal. It is so ordered.

**Dated, signed and delivered at Meru this 14<sup>th</sup> day of October 2020**

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**F. GIKONYO**

**JUDGE**

**Representation**

Appellant – present

Mrs. Mutegi for appellant

Maina for state

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**F. GIKONYO**

**JUDGE**