



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 28 OF 2020

ADANKHEIR BARROW MOHAMED.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The application subject of this ruling is dated the 3rd of November 2020 and it seeks for one substantive prayer; admission to bond/bail pending hearing and determination of the appeal herein.
2. The application is predicated on grounds that the charge sheet was defective; the court based its decision on inconsistent and contradictory evidence; the magistrate relied on the evidence of a deceased witness; the trial court ignored defence statements; evidence was inadequate and lastly that the applicant is likely to be prejudiced as there is likelihood of a delayed hearing of the appeal.
3. The State failed to respond to the application.
4. In submitting counsel for the applicant Miss Awour relied on several authorities namely; **Peter Ngatho vs Republic [2015] eKLR, George Thumbi vs Republic [2018] eKLR, Julius Kipsang vs Republic [2020] eKLR, Michael Ndwiga Kathure vs Republic [2019]**.
5. The court understands Counsel for the appellant to have urged that where an appeal is not frivolous; there is a possibility of delay in hearing the appeal; the applicant had complied with earlier bond terms and if the appeal has a high chance of success, without necessarily complying to all the conditions and where the applicant is likely to serve most of his jail term before the appeal is heard and determined, then such an applicant should be admitted to bond/bail.
6. Bail pending trial and bail pending appeal are considered based on different principles as a person already convicted loses the consideration of being innocent until proven guilty.
7. There are several authorities setting out principles to be considered on this issue of bail pending appeal.

In **Jivraj Shah vs Republic [1986] KLR 605** the court stated 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 the appeal is likely to be successful on the 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 on 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.”

8. The above principles have been followed in several other cases; for example, in **Francis Mithika vs Republic [2018] eKLR and Kigora Machora vs Republic [2019] eKLR.**

9. Without pre-empting the appeal, the application before court and counsel’s submission fell short of laying bare the fact that the trial court failed to consider substantial point of law, prima facie further no exceptional or unusual circumstances have been demonstrated.

10. Thirdly, it is highly unlikely that the appeal will be delayed as the proceedings are ready and as soon as the record of appeal is filed, appeal is admitted, the court will be able to hear the appeal.

11. The application for bond/bail pending appeal is found to be unmerited and the same is declined.

DATED AND DELIVERED AT GARISSA THIS 10th DAY OF DECEMBER, 2020.

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ALI ARONI

JUDGE