



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 155 OF 2018

HARRIET KANORIO.....1ST APPELLANT

WILSON GICHOHI WANJOHI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

[1] The Motion dated 7th December 2018 is made pursuant to **Section 357 (1) of the Criminal Procedure Code CAP 75 Laws of Kenya** and it seeks amongst other orders that the 1st Applicant be released on bail pending appeal.

[2] The application is premised on grounds set out in the application and the supporting affidavit sworn 7th December 2018. The major argument advanced is that there are exceptional circumstances to warrant her release on bail pending appeal. It was further urged that the appeal has overwhelming chances of success. Again, the appeal is likely to take long before it is heard and determined. And as a consequence, the 1st applicant stands to lose her job at Parl Limited where she is a manager unless she is granted bail. She takes the view that releasing her would also decongest the prison facilities which are already overwhelmed. She stated that she is not a flight risk as she never absconded court during trial despite having been on bond for a period exceeding six years.

[3] The respondent opposed the application and submitted that the application is premature as it lacks merit and ought to be dismissed for there is no exceptional or unusual circumstances that would warrant bail pending appeal. Furthermore, no proof thereof was provided. They relied on the case of **Jivraj Shah -vs- Republic [1986] KLR 605**.

ANALYSIS AND DETERMINATION

[4] It should be noted that the appellant has been convicted and sentenced by a court of competent jurisdiction. She may therefore not benefit from the right to be presumed innocent until proven guilty. Therefore the test for bail pending appeal is as was set out in the case of **Jivraj Shah -vs- Republic [1986] KLR 605**, inter alia:

“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 held:

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 also the lower court file. Without preempting the outcome of the appeal, it has not been demonstrated that the appeal has an overwhelming chance of success. Moreover, I do see any exceptional or unusual circumstances to warrant bail pending appeal- none has been established by evidence. I am aware that decongestion of prison is a noble administrative act, but is done on proper grounds and in appropriate cases. It is not a matter of course for all cases that they will be released out of prison on account of decongestion of prison. There is nothing which warrants granting of bail to the 1st Applicant.

[6] From the foregoing, I find the application to be unmeritorious and is dismissed. This appeal be fast tracked. Record of appeal be prepared and served in 14 days. Direction shall be given on a date to be appointed by court. It is so ordered.

Dated, signed, and delivered in open court this 6th March 2019

F. GIKONYO

JUDGE

In presence of

Namiti for respondent

Ndubi for appellant – absent

Applicant – absent

F. GIKONYO

JUDGE