



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO 21 OF 2019

AHMED ADAN IBRAHIM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By an application dated 17/5/2019 the Applicant seeks orders for admission for bond/bail pending appeal. Same is based on Provisions of section 356 and 357 Criminal Procedure Code and Article 49(1) (h) Constitution of Kenya.

2. It is anchored on the grounds that:-

(1) That unless the Applicant is admitted to bail/bond pending appeal, he stands to suffer irreparable loss, and harm by the time the appeal is finally heard and determined.

(2) That the Appellant is a young man and if not admitted to bond he stands to suffer.

(3) That the Appellant had been admitted for bail of Kshs.20,000/= and a surety of a similar amount in Mandera Criminal Case No. 576 of 2018 and did not fail to attend court any time.

(4) That the Appellant is not a flight risk and is ready to comply with the court conditions and attend court whenever he is asked to do so.

(5) That the appeal has overwhelming chances of success.

(6) That the learned magistrate erred in law and facts in convicting the appellant which errors are manifested on the record.

3. It is supported by affidavit of the Applicant sworn on 16/5/2019. The same reiterates the grounds on the application.

4. The same was opposed by the prosecution principally on the ground that overwhelmingly chances of success of appeal are not demonstrated by the Applicant.

5. The issues herein are whether the parameters set for grounds of bond/bail pending appeal have been demonstrated.

6. The Applicant in submissions relied on 2 authorities;

(1) ***Thumbi vs Republic [2018] eKLR*** which citing Ugandan case of ***Arvid Patel vs Uganda SCCr. Appeal 1 of 2013*** held that factors to be considered in granting bail pending appeal are:-

- **Character of offender.**
- **Whether he is first offender.**
- **Whether offence involves personal violence.**
- **Whether appeal has chances of success.**

- Whether there is possibility of substantial delay in determining appeal.
- Whether Applicant complied bail conditions in lower court.

(2) *Chirchir vs Republic HCCRA 98 of 2016, Nakuru*. The court listed factors for grant of bail pending appeal as:-

- Whether accused is a flight risk.
- Whether appeal has chances of success; and
- How soon appeal is likely to be determined.

7. The Applicant was charged with offence of causing actual bodily harm contrary to section 251 of the Penal Code. He was Convicted and sentenced to serve 4 years imprisonment.

8. In mitigation he was not remorseful as noted by trial court but just said that, ***"I urge court to release me."***

9. I have perused the proceedings. I find the offence was allegedly at around 11 am in broad day light. The Applicant in his sworn defence only stated in his testimony that they fought with complainant. He never called any witness. On prosecution case PW1- 4 witnessed the incident and seems to be contradicting the Applicant.

10. I have perused the grounds of appeal filed. When factors for grant of bail pending appeal are applied in the case herein, I find:-

1. *The overwhelming chances of appeal element are not demonstrated.*
2. *The offences involved violence.*
3. *There is no chance of delay in hearing the appeal. This can be disposed as soon as Appellant is ready.*
4. *The trial court file is already with this court.*

11. The court finds no merit on application and makes the following orders:-

- (1) ***The application is dismissed.***
- (2) ***Appeal to be heard on priority basis.***

DATED, DELIVERED AND SIGNED AT KITUI THIS 17TH DAY OF OCTOBER, 2019.

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C. KARIUKI

JUDGE