



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 26 OF 2019

ABDIAZZIZ YUSSUF GEDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant moves Court via a Notice of Motion dated 15/8/2019 seeking to be admitted to bail pending Appeal.
2. The same Motion is based on Section 357 Criminal Procedure Code Cap 75 Laws of Kenya inter alia and is supported by the grounds on the face of the motion. The same is premised on the facts that the Applicant was charged and convicted of the offence of threatening to kill contrary to Section 223 (1) Penal Code. Particulars being that ***“without lawful excuse he uttered threatening words to complainant that he will kill him while armed with a knife and a metal bar”***.
3. The Applicant avers that he is a student of University of Nairobi who was set to graduate in September 2019.
4. That his appeal had high chances of success on the grounds that the charges were defective in terms of the provisions of Section 134(1) Criminal Procedure Code inter alia.
5. The Application is supported by the affidavit he swore on 18/8/2019 reiterating the same grounds.
6. **Section 357 (1) of the Criminal Procedure Code** provides admission to bail pending appeal, it states that:

“After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”
7. In the case of **Jivraj Shah versus Republic [1986] KLR 605** the principles for grant of bail pending appeal were established as:
 - i. The existence of exceptional or unusual circumstances upon which the Court can fairly conclude that it is in the interest 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 the weight and relevance of the points to be argued.***
8. I have perused the proceedings and the charge sheet applicant faced. It is apparent the incident was witnessed by many people but only one person, PW1 was called as a witness. He testified that accused was armed with stick and a knife whereas complainant says accused was armed with metal pod and a knife.
9. PW2 said accused threatened to beat complainant whereas complainant said the uttered the words that ***“either gives him money or he kills him”***

10. These are some of factors which would make court to be persuaded that appeal has chances of success.

11. On the other hand there were other unrebutted averments that applicant is a student in university, he is a first offender and has been of good moral character.

12. He was also a bond of Kshs. 200,000 during the trial. He did not violate the bail terms nor abscond.

13. The court thus is of the view that the material before court on prima-facie basis discloses the application has met threshold of granting of bail pending Appeal. Thus, court makes the following orders;

I. The applicant shall execute a kshs 200,000 bond or pay cash kshs 50,000.

II. The appeal to be heard on priority basis.

Dated at Garissa this 9th day of October 2019

C. KARIUKI

JUDGE