



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL APPEAL NO. 95 OF 2019**

**MOHAMMED MAKOKHA KASSIM.....APPELLANT/APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant herein was convicted of the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act Cap 403 of the Laws of Kenya and sentenced to a fine of Ksh. 100,000/= in default to serve 4 years imprisonment. He was dissatisfied with the conviction and the sentence and filed the appeal pending herein.

2. In the time being the applicant has filed an application dated 12<sup>th</sup> September, 2019 seeking to be released on bail pending the hearing and determination of the appeal. The grounds in support of the application are that:-

- (1) The applicant was on bail during the trial at the lower court.*
- (2) The applicant religiously attended court until conclusion of the case.*
- (3) The appeal has overwhelming chances of success.*

3. The state did not oppose the application.

4. The court has powers under section 357 of the Criminal Procedure Code to grant a convict bond pending appeal. The principles applicable in an application for bond pending appeal are that the applicant has to demonstrate to the court that:-

- (1) There exist exceptional circumstances to warrant grant of bail/bond.*
- (2) The appeal has overwhelming chances of success.*

5. In **Somo Vs Republic (1972) EA 476** the Court of Appeal held that the most important ground is that the appeal has an overwhelming chance of being successful, in which case there is no justification for depriving the applicant of his freedom.

6. These principles were re-stated by the same court in **Jivraj Shah Vs Republic (1980) eKLR** where the court stated that:

*(a) 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 interest of justice to grant bail.*

*(b) If it appears prima facie from the totality of the circumstance 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.*

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

7. I have considered the application. The applicant is not a flight risk. The state did not oppose the application. I have gone through the evidence adduced at the lower court. In my view, the appeal raises triable issues and has high chances of success. There is thus no reason to deny the applicant bond pending appeal.

8. The advocate for the applicant Mr. Mukisu implored the court to release the applicant on cash bail of Ksh. 50,000/= that he had deposited during the trial at the lower court which has not yet been refunded to him. I grant the applicant cash bail of Ksh. 50,000/= to be catered for by the cash bail deposited at the lower court. Original receipt thereof to be deposited with the court.

**Delivered, dated and signed in open court at Kakamega this 1<sup>st</sup> day of October, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

Mr. Were holding brief for Mukisa for appellant/applicant

Miss Omondi for respondent

Parties: Appellant/applicant - absent

Court Assistant - George