



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL NO.6 OF 2018

JAMES KARUTHIRU WANGUI.....APPELLANT/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application before me is brought under certificate of urgency dated 7th May, 2018 and the Notice of Motion of the same date. The Notice of Motion is brought under article 49(h) of the Constitution of Kenya 2010 and Section 357 of the Criminal Procedure Code.

It seeks orders that the appellant/applicant be released on bond/bail on reasonable conditions pending the hearing of the appeal. It is supported by the affidavit sworn by D.G. Muthee advocate to the effect that the appeal has high chances of success, the applicant/appellant is willing to abide by conditions set by the court, and that the offence for which he was convicted is bailable.

The applicant was found guilty and convicted of three counts of causing death by dangerous driving contrary to section 46 of the Traffic Act Cap 403 Laws of Kenya, and one count of failing to report an accident. He is serving a 5 year term of imprisonment.

The only issue is whether the application is merited.

Directions were given for submissions to be filed on/before 30th June 2018. I have not seen them as I write this ruling.

In Gerald Macharia Githuka -Vs- Republic Criminal Appeal No.119/2004 the court said:-

“The cornerstone of the Justice system is that no one will be punished without the benefit of the due process including the right to exhaust the right of appeal incarceration before trial/pending hearing of an appeal cuts against this principle....”

See also Stephen Mwaniki Muriuki -Vs- Republic Nyeri HCCRA 64 of 2017 where this court stated that bail pending appeal is also a constitutional right protected by Article 49 (1) (h) of the Constitution of Kenya 2010.

In this case therefore I make the following order:-

1. That application for bail is allowed subject to the filing of a Pre-Bail Report on or before 28th September, 2018.
2. This order be served on the County Probation Officer for compliance
3. Mention on the 28th September for orders.

Dated, delivered and signed in open court at Nyeri this 20th day of September 2018

Mumbua T. Matheka

Judge

In the presence of: