



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL APPEAL NO 43 OF 2017

(FORMERLY ELDAMA RAVINE HCCRA NO. 167 OF 2016)

MICHAEL BIWOTT SEGEROT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Being an appeal against the conviction and sentence of Hon. J.L. Tamar, Principal Magistrate in Eldama Ravine Criminal Case Number 167 of 2016, 169 of 2016, 170 of 2016 and 171 of 2016 delivered on the 17th July 2018]

RULING

The Principle

[1] This court has previously considered the principles for the grant of bail pending appeal in the case of **PETER WANJOHI NJIRAINI v. R**, MACHAKOS HC CRI. APPEAL NO. 56 OF 2015, as follows:

“Principles for the grant of bail pending appeal

3. Article 49 (1) (h) provides as one of the rights of arrested persons –

“(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

4. Although the applicant’s right to presumption of innocence has been extinguished by his conviction by the trial court, the right to bail pending trial must meaningfully be taken to be co-extensive to the criminal trial process, which includes appeal. However, in determining whether there are compelling reasons for refusal of bail, the fact that the applicant is now a convict must be taken to be a compelling reason in that a convicted person is likely to abscond because his guilt has already been established and certainty of punishment which has already been imposed.

5. **In *Boke Chacha v. Republic***, Kisii H.C. Cri. Appeal No. 244 of 2012, I considered the principles for the grant of bail pending appeal

“According to authorities on bail pending appeal, bearing in mind that the applicant has now been convicted by a competent court and is on punishment for the conviction which stands until it is set aside on appeal, the criteria for consideration is:

a. Whether there exists exception or unusual circumstances which justify grant of bail in interests of justice. See *Jivraj Shah v. R* (1986) KLR 605.

b. Such exceptional circumstances exist where the appeal has overwhelming chances of success or where a set of circumstances exist which disclose substantial merit in the appeal and that the sentence or a substantial part of it will have been served by the time the appeal is heard. See *Jivraj Shah*, supra; *Mutua v. R* (1988) KLR 497; and *Somo v. R* (1972) E.A 476.

c. The previous good character of the applicant and the hardships facing his family, and his ill health, where there existed prison medical facilities for prisoners, are not exceptional or unusual circumstances. See *Dominic Karanja v. R* (1986) KLR 612.

d. A solemn assertion, even if supported by sureties, that the applicant will not abscond if released is not sufficient ground for

*releasing a convicted person on bail pending appeal. See **Dominic Karanja, supra.***"

Application of the Principle

2. On the said tests, this case does not disclose unusual or exceptional circumstances whether on the substance of the appeal or the situation of the appellant.
3. Without prejudice to the hearing of the appeal, I do not find that the appeals have such overwhelming chances of success as would warrant the grant of bail pending appeal.
4. The alleged ill-health of the appellant is similarly not an exceptional matter, as the Prison facility has not been shown to be ill-equipped to deal with his treatment, and there is always the opportunity to refer a patient to hospitals with higher levels of facilitation should need arise.
5. It is also immaterial that the appellant has been on bail pending trial in the sum of Ksh.100,000/- as he is now convicted and has lost the presumption of innocence and the flight risk is considerably increased by the reality of a conviction and sentence for an aggregate of 8 years imprisonment.
6. The appellant was sentenced to serve two years imprisonment in the four cases – Eldama Ravine PMCCr. Cases Nos. 167 of 2016, 169 of 2016, 170 of 2016 and 171 of 2016 the sentences running concurrently, and will, accordingly, serve an imprisonment period of 8 years. This cannot be said that an unusual circumstances on account of the possibility of the appellant serving the entire of substantial portion of the sentence before the appeal is heard.
7. However, as the appellant has appealed from each appeal as shown in the Petition of Appeal herein dated 23rd July 2018, each sentence of 2 years should be taken into account separately, and in order that the appellant does not serve a whole 2 year sentence before the appeal is heard and determined early dates for hearing should be granted by the court.

Orders

8. Accordingly, for the reasons set out above, the court makes the following orders:
 1. The appellant's application for bail pending appeal herein is declined.
 2. The appellant's appeal shall be set for hearing on priority dates convenient to court and counsel.

Order accordingly.

DATED AND DELIVERED THIS 10TH DAY OF DECEMBER 2018

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Assistant DPP for the Respondent.