

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.252 OF 2018

(An Appeal arising out of the conviction and sentence of Hon. E. Riary (SRM) delivered on 22nd November 2018 in Nairobi Traffic Case No.76161 of 2018)

SULEIMAN KUNG’U MACHARIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Appellant, Suleiman Kung’u Macharia was convicted of the offence of **causing death by dangerous driving** contrary to **Section 46** of the **Traffic Act**. The Appellant was sentenced to pay a fine of Kshs.400,000/- or in default he was to serve three (3) years imprisonment. The Appellant was aggrieved by this decision. He has filed an appeal to this court. Pending the hearing and determination of the appeal, the Appellant applied to be released on bail pending the hearing and determination of the appeal. The grounds in support of the application are stated on the application and the affidavit in support thereof sworn by the Appellant. In essence, the Appellant states that his appeal has a high chance of success and further, there were exceptional circumstances which would persuade this court to grant him bail pending appeal. The exceptional circumstances were that he was the sole caregiver to his children, one of whom was ailing and had been admitted to hospital. The Appellant undertook to abide by any terms that this court may impose to enable him be released on bail pending appeal.

During the hearing of the application, this court heard oral rival submission made by Mr. Mwangi for the Appellant and by Ms. Atina for the State. Whereas Mr. Mwangi urged the court to allow the application on the basis that the Appellant had made a case for this court to grant him bail pending appeal, Ms. Atina was of the view that the Appellant had failed to establish the essential ingredients to enable this court exercise its discretion in his favour to grant him bail pending appeal. She submitted that the grounds put forward by the Appellant did not fall within the ambit known in law for this court to grant the application sought. She urged the court to dismiss the application.

This court has carefully considered the rival submission made by the parties to this application. It has also considered the authorities cited in support of the application. The Appellant appreciates that the principles guiding this court in determining whether or not to grant bail pending appeal are well settled. The Court of Appeal in **Jivraj Shah –vs- Republic [1986] KLR 605** at page 606:

*“There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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 in law to be urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision in **Somo –vs- Republic [1972] E A 476** which was referred to by this court with approval in **Criminal Application No.NAI 14 of 1986, Daniel Dominic Karanja –vs- Republic** where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. It is almost self-defeating to attempt to define phrases or to establish formulae. There is a helpful passage in Archbold, **Criminal Pleading Evidence and Practice, 41st Edition page 783, paragraph 7 – 86.**”*

In the present application, it was clear to this court that the Appellant has a point when he states that his appeal has high chance of success especially in regard to the fine that was imposed which he states was harsh and excessive. This court will have the opportunity to interrogate the grounds of appeal put forward by the Appellant. Suffice for this court to state that the Appellant has established that his appeal on sentence has a better than even chance of success when the appeal will be canvassed before this court.

In the premises therefore, the Applicant’s application for bail pending appeal shall be allowed. The Appellant shall be released on bail pending appeal upon depositing the sum of Kshs.100,000/- as security for his release. The court noted that the Appellant had already deposited this amount before the trial court to secure his release on bail pending trial. He shall surrender the deposit receipt to this court which shall enable him to be released on bail pending appeal. The Appellant is granted sixty (60) days from the date of this Ruling to prepare, file and serve the record of appeal so that the appeal may be heard. This case shall be mentioned before this court on 12th February 2019 for the purposes of confirming compliance and fixing the hearing date for the appeal. It is so ordered.

DATED AT NAIROBI THIS 7TH DAY OF DECEMBER 2018

L. KIMARU

JUDGE