



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL APPEAL NO. 81 OF 2016**

**PAUL WACHIRA NDERITU .....APPELLANT**

*versus*

**REPUBLIC.....RESPONDENT**

**RULING**

1. **PAUL WACHIRA NDERITU** was convicted on 8<sup>th</sup> July 2016 before the Chief Magistrate's court in Nanyuki on **two counts**. He has filed an appeal before this court and pending the hearing and determination of that appeal the appellant has sought for bail by his Notice of Motion dated 27<sup>th</sup> October 2016.
2. The appellant has based his application on the ground that his appeal has high chances of success; because the trial had procedural and legal defects; and if not released on bail the appellant will continue to serve his sentence of eight years.
3. Justice Lesiit in the case **MUNJIA MICHUBU - V- REPUBLIC [2014] eKLR** considering a similar application had this to say:

*“Unlike an application for bail pending trial where the applicant has a constitutional right to be considered innocent until proved guilty (Article 49 of the Constitution) an applicant for bail pending appeal stands on the premise that is he has already been found guilty on the offence. In an application for bail pending appeal the principle consideration is whether the appeal has a likelihood of success (Ademba vs Republic 1983 KLR 442 and Somo vrs Republic 1972 EA 476. The other considerations are whether there exist exceptional circumstances that would justify the applicant being granted bail pending his appeal. The other grounds upon which bail may be granted is where there is an anticipated delay in the hearing of appeal which ground should be considered together with other factors which constitute grounds for granting bail pending appeal (see Chimambhai 1971 EA 343).”*

4. The Supreme Court of Vanuatu the case **Public Prosecutor v McEwen [2011] VUSC 280; Criminal Case 80 of 2010(9 September 2011)** was of the same vein as the above case. It held as follows:

*“The grant of bail pending appeal is not the same as an application for bail pending trial where the defendant has a presumption of innocence in his favour. After a conviction the presumption, if one can call it that, is reversed and there is no longer a presumption of innocence. Indeed the position is that unless and until a conviction is set aside or quashed it remains valid for all intents and purposes including as some justification for the sentence imposed.”*

5. Bearing in mind the above decisions the appellant had an onus to show on a balance of probability that his appeal has a high chances of success or that there were exceptional circumstances that would justify the order for bail pending appeal. The appellant other than stating, in his application that the trial had procedural and legal defects did not elaborate on what those defects were. The court has considered the trial court's proceedings and judgment. Having done so, it is the opinion of this court, that the appellant's appeal does not have high chances of success. The appellant did not also show that there were exceptional circumstances which would lead the court to grant him bail pending appeal.

6. The third consideration that this court should bear in respect of an application for bail pending appeal is that where there is a likely delay in hearing the appeal the court should consider granting bail. The appellant filed his appeal on 27<sup>th</sup> October, 2016. The appeal was admitted for hearing on 8<sup>th</sup> November, 2016. This appeal is now ready for hearing. There is no likelihood of delay in concluding this appeal.

7. It follows from the above discussion that the appellant's application for bail pending appeal must and does fail. **It is dismissed.**

8. At the reading of this Ruling the court shall fix this appeal for hearing.

**DATED AND DELIVERED THIS 25<sup>TH</sup> DAY OF JANUARY 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Paul Wachira Nderitu

For the State: .....

**COURT**

Ruling delivered in open court.

**MARY KASANGO**

**JUDGE**