



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL APPEAL NO. 3 OF 2017**

**(CORAM: J.A. MAKAU – J.)**

**FELIX OTIENO OLUOCH.....APPELLANT**

**VS**

**REPUBLIC.....RESPONDENT**

***(Being an Appeal against both the conviction and the sentence dated 05.09.2016 in Criminal Case No. 1250 of 2016 in Bondo Law Court before Hon. E.N. Wasike-SRM)***

**JUDGMENT**

1. The appellant and another were charged with an offence of grievous harm contrary to **Section 234 of the Penal Code**. The particulars of the charge are that on the **25<sup>th</sup> day of September 2016** at around 5.30pm at Lusi village in Rarieda sub-county within Siaya County, jointly with another not before Court, unlawfully did grievous harm to **PAUL OUMA OGOLLA**.
2. The appellant was convicted and sentenced to serve twelve (12) months.
3. Aggrieved by the conviction and sentence, the appellant preferred the appeal and at the same time filed application to be released on bail pending the hearing and determination of this appeal. The application is based on the ground that the appellant is likely to suffer and/or serve a substantial portion of his sentence and/or incarceration if the appeal is not heard on priority basis. The appellant further urged that he is a student.
4. M/S M. Odumba, the Learned State Counsel, opposed the application pointing out that the appellant is no longer presumed innocent as he is already convicted and that he has not given sufficient grounds to warrant him being released on bail, pending appeal.
5. It is therefore of paramount importance in dealing with an application for bail/bond pending hearing and determination of an appeal to bear in mind that there are set out parameters to be considered by the Appellate court in dealing with application for bail pending appeal. In the case of **Jivraj Shah V Republic (1980) KLR 605**, the Court of Appeal 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 circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or***

***substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist.***

***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.”***

6. In the case of **Ademba V Republic (1983) KLR 442**, the Court of Appeal as regards the parameters to be considered by an Appellate court in an application for bail pending appeal held thus: -

***a) Bail pending appeal may only be granted if there are exceptional or unusual circumstances.***

***b) The likelihood of success in the appeal is a factor to be taken into consideration in granting bail pending appeal. Even though the appellant showed serious family and personal difficulties in view of the unlikelihood of success in this appeal, the application could not succeed.***

7. I have very carefully perused the applicant's application and have noted the applicant has not demonstrated in his grounds of appeal that the appeal has overwhelming chances of success and/or the contention that sentence or substantial part of it will have been served by the time the appeal is heard, this as one of the grounds of granting bail may not be applicable in this matter as this court has available dates and the court was even ready to hear this appeal instead of the application but the applicant was not willing to proceed with the appeal but the application first. The applicant has failed to satisfy the set out parameters to be considered by the court in dealing with an application for bail pending appeal.

**8. The upshot is that this application is not meritorious. The application for bail pending appeal is dismissed. I order the appeal to be set down for hearing forthwith.**

**DATED AND SIGNED AT SIAYA THIS 2<sup>ND</sup> DAY OF MARCH 2017.**

**J.A. MAKAU**

**JUDGE**

**DELIVERED IN OPEN COURT THIS 2<sup>ND</sup> DAY OF MARCH 2017.**

**In the presence of:**

**Appellant in person:** present

**M/S Odumba:** for State

**Court Assistants:**

1. George Ngayo
2. Patience B. Ochieng
3. Sarah Ooro

**J.A. MAKAU**

**JUDGE**