



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CRIMINAL APPEAL NO. 58 OF 2016**  
**GERALD MUNENE MUCHIRA.....APPELLANT**  
**-VERSUS-**  
**REPUBLIC.....RESPONDENT**

**RULING**

The appellant/applicant **Gerald Munene Muchira** has filed the application dated 15<sup>th</sup> December, 2016 under **Section 357** of the **Criminal Procedure Code Cap. 73** of the **Laws of Kenya** seeking orders *inter alia* that he be released on bail/bond pending the hearing and determination of the appeal herein.

The appellant/applicant was tried, convicted and sentenced to serve three (3) years in jail by Hon. A. N. Makau, Senior Resident Magistrate, Gichugu Court. The Appellant being aggrieved and dissatisfied by the conviction and sentence filed an appeal to this Court on 25<sup>th</sup> November, 2016. He filed this application seeking orders that he be released on bond/bail pending the hearing and determination of the appeal under **Section 357** of the **Criminal Procedure Code, Supra**.

The application is based on four grounds namely:

- (a) That the appellant's appeal has got overwhelming chances of success.***
- (b) That the sentence was excessive in the circumstances.***
- (c) That the appellant might lose his job if not released on bail.***
- (d) That the appellant was convicted and sentenced to serve three years in jail and if not released on bond, then he might serve the whole term before the appeal is heard.***

The issue for determination is whether the application has merits. On the first ground that appeal has high chances of success, it is noted that the state through the Office of Director of Public Prosecution did not oppose the application. The applicant has not in his affidavit demonstrated that the appeal has high chances of success. This is a requirement in applications of this nature as held in the case of **Dominic Sibi Peter -Vs- R (2014) eKLR** where Hon. Justice Lesiit quoting from the case of **Jomo -V- Republic (1972) E.A. 476** stated as follows:

***“The most important ground is that the appeal has an overwhelming chance of being successful and in which case there is no justification for depriving the applicant his freedom.”***

The counsel for the applicant, Mr. Ndana submitted that the appeal has high chances of success. I have

perused the proceedings of the lower court and since the issue as to whether the appeal has high chance of success was not canvassed, I am of the view that less be said to avoid prejudice to either party in the appeal.

On the second ground that the sentence was excessive in the circumstances. As pointed out in the case of Jomo Supra the most important consideration is whether the appeal has overwhelming chance of being successful. This ground will be determined in the appeal.

The Appellant on the third ground contends that he might lose his job. He submitted a letter from Kenya Women Micro Finance Bank Limited dated 5<sup>th</sup> January, 2017 warning him that failure to report to work by 12<sup>th</sup> February, 2017 his contract will be terminated without further notice, he will lose all benefits and shall pay the organization one month salary as indicated in his letter of contract. The State did not oppose the ground. Mr. Sitati, prosecuting counsel stated that the above letter raises certain circumstances. He also submitted that the Appellant may serve a considerable part of the sentence if not released. **Section 357 (1) of the Criminal Procedure Code, Supra**, provides:

***“After the entering of an appeal by a person entitled to an appeal, the High Court, or the Sub-ordinate court, which convicted or sentenced that person, may order that he be released on bail with or without sureties, or if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.”***

The accused was sentenced to serve three years. As submitted, he may serve a substantial part of the sentence before the appeal is heard and determined. It is in the interest of justice that he be released on bond. In view of the pendency of the appeal I find that this ground has merits. I find that the application has merits. It is allowed. I doubt that the appeal would take three years to be heard and determined. The fourth ground does not hold any water. I order that the Appellant be released on a bond of Kshs.200,000/- plus one like surety pending the hearing and determination of the appeal. The surety be approved by the Deputy Registrar. The Appellant’s counsel to ensure that the appeal is filed and the lower court record is placed before this Court for directions as provided under **Section 353** of the **Criminal Procedure Code**.

**L. W. GITARI**

**JUDGE**

**3.2.2017**

**Ruling signed and read out in open Court in the presence of the Appellant, Mr. Sitati State Counsel for State and Court Assistant Naomi this 3<sup>rd</sup> day of February, 2017.**

**L. W. GITARI**

**JUDGE**