



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL APPEAL NO. 90 OF 2015**

**ELIAS MURIITHI NGICIRI.....APPLICANT/APPELLANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**R U L I N G**

1. The applicant in this notice of motion dated 23/11/2015 seeks for bail pending appeal and for stay of execution of the ten (10) years imprisonment sentence imposed by the learned magistrate in Criminal case No. 1212 of 2010 pending hearing and determination of the appeal.
2. The grounds in support of the application are that the appeal has high chances of success, that he has a good record of attending court when he was on bail pending trial and that he is ready to abide with any conditions of bail given by the court in this motion.
3. The affidavit in support of the motion was sworn by the counsel Ms. Muthoni Ndeke who filed the application. It explains the grounds relied on by the applicant.
4. This matter was later taken over by Mr. Guantai on 25/10/2016. In his oral submissions Mr. Guantai, argued that the appeal has good chances of success, and that he is already serving sentence. That the applicant supports his elderly mother and he will be better placed to continue in his family support duties if released on bond. The counsel further asked the court to release the applicant on bond on humanitarian grounds.
5. The application was opposed by Ms. Nadwa for the respondents on grounds that the appeal has no chances of success. She relied on the case of ***DOMINIC KARANJA VS REPUBLIC [1986]*** where it was held that the applicant in an application for bail pending appeal must satisfy the court that the appeal has high chances of success.
6. The case of ***JOSEPH KAMAU GITHU VS DPP [2013] eKLR*** was also cited by the state for the requirement to proof special or exceptional circumstances as a minor but relevant condition.
7. The applicants counsel argued that the ***DOMINIC KARANJA CASE*** is an old authority of 1986 and that in the case of ***JOSEPH K. GITHU (supra)***, the court eventually granted bail.
8. It is trite law that in granting bail pending appeal the court must remind itself that unlike bail pending trial, the applicant has already been convicted of the offence and has lost the presumption of innocence. The applicant bears the burden to convince appeal court that the conviction was not safe. The case of ***DANIEL DOMINIC KARANJA (supra)*** is a good guide and though an old authority, it is still relevant. The two most important things that this court must determine are the chances of success of the appeal. The

applicant may also establish that there exists unusual or exceptional circumstances that may persuade the court to grant bail.

9 It is noted that the chances of success of the appeal must not be overwhelming but must be high. The previous good character or conduct of the applicant or his family responsibility does not constitute unusual or exceptional circumstances. The assertion by the applicant that he will not abscond is not a sufficient ground for releasing a convicted person on bail pending appeal.

10. I have perused the judgment of the learned magistrate vis a vis the grounds of appeal. Without pre-empting the appeal I am not convinced that the appeal has high chances of success.

11. The applicant has not proved existence of any usual or exceptional circumstances to justify granting bail. I find no justification either to suspend the sentence imposed.

12. I find no merit in this application and dismiss it accordingly.

13. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 14TH DAY OF MARCH, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Nandwa for Respondent**

**Mr. Guantai for Applicant**