



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO.22 OF 2017

JASON KAAI ARIMIAPPELLANT

Versus

REPUBLIC RESPONDENT

RULING

Bail pending appeal

[1] Before me is the application dated 21st February 2017 made under section 356 and 357 of the Criminal Procedure Code. The following two significant orders have been sought, to wit:-

- (a) That the Appellant be admitted to bail pending the hearing and determination of the appeal he has filed against conviction and sentence in Criminal Case No 326 of 2017; and**
- (b) That the court be pleased to issue such other and or substitute the sentence of imprisonment imposed by the trial court with an option of fine or non-custodial sentence.**

[2] The application is supported by the affidavit of the Appellant, the grounds set out in the application and others adduced during the hearing of the application. The major grounds cited are:

- (a) That the appellant was erroneously convicted as; the plea was not unequivocal; the language used in the taking of the plea was not indicated; and mitigation was not considered;**
- (b) That the sentence imposed is grossly excessive, harsh and illegal, thus, against the Constitution, for it did not provide for an option of fine;**
- (c) That the Appellant who is a teacher by profession risks losing his job unless he is released on bond; this is great prejudice;**
- (d) That his appeal raises triable issues; and**
- (e) That bail is his constitutional right.**

[3] The prosecution did not oppose the application and stated that the Appellant is likely to serve sentence before his appeal is heard.

[4] I must state that bail pending appeal is not automatic. It is granted upon defined legal threshold. Accordingly, the court must be satisfied that:-

(a) The appeal has overwhelming chances of success, such that, there will be no justification to deny the appellant his freedom as the appeal is being heard;

(b) There are exceptional or unusual circumstances;

(c) There is high probability that the appellant will serve the sentence before the appeal is heard.

Relevant judicial decisions on these thresholds include; (1) **DOMINIC KARANJA vs. REPUBLIC [1986] KLR 612;** (2) **SOMO vs. R [1972] E.E 476;** (3) **ADEMBA vs. R (1983) KLR 442;** and (4) **CHIMABHAI vs. R [1971] E.A 343.**

[5] Applying this test:

...The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the Applicant of his liberty....

In discerning whether the appeal has overwhelming chances of success, the court will not be determining the grounds of appeal but will be considering whether from the arguments presented the appeal raises issues worth of trial in the appeal. Therefore, I venture to state that, frivolous appeals which are candidates for summary rejection cannot be said to satisfy this condition. See a work of court in the case of **BGM HC MISC CR APPEAL NO. 163 OF 2012** that;

... in determining whether the appeal has overwhelming chances of success, the court is not determining the appeal or confirming the success or otherwise of the appeal, but it is simply saying that, from the material before the court for purposes of the application for bail only, there are high or overwhelming chances of the appeal to be successful.

[6] Upon consideration of the arguments presented, the contentions that; the plea was not unequivocal, the language used was not indicated and that there was no option of fine given are triable matters worth of consideration by the court. But, there is yet another consideration which is patently in sight; that the appellant is likely to serve the sentence before the appeal is heard. The sentence imposed is three months. It was passed on 20.2.2017. There is, therefore every possibility that the sentence will have been served by the time this appeal is heard. For those reasons, admission to bail is warranted. Accordingly, I admit the appellant to cash bail of 30,000 or a bond of similar amount with one surety. It is so ordered.

Dated, signed and delivered in open court at Meru this 6th day of March 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Kiogora advocate for Mugambi advocate for applicant

Mr. Mulochi advocate for respondent

Appellant – absent

F. GIKONYO

JUDGE