



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CRIMINAL APPEAL NO. 24 OF 2017**

**HOSTINE OSANJI ONZERE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

By a chamber summons dated 16.3.17, brought under Sections 356 and 357 of the Criminal Procedure Code, the appellant prays for an order:-

***THAT this Honourable Court be pleased to admit the appellant/applicant to bail pending the hearing and determination of the appeal with or without sureties and/or suspend the sentence pending the hearing and determination of the appeal herein***

The application is based on the grounds that:-

- a. The appellant was convicted of offences of improperly using electric energy contrary to section 64(4) (d) of the Energy Act and disconnecting electrical apparatus without authority contrary to section 64(4) (d) of the Energy Act and was fined Kshs. 500,000/- in default 2 years imprisonment and Kshs. 100,000/- in default 1 year imprisonment respectively
- b. The appellant has already served 40 days in jail and he is ready
- c. Appellant is willing to give security for bail or provide securities to ensure he appear during the hearing of the appeal.

The application is supported by an affidavit sworn on 5.5.17 by Peter Apuuli Rufundamu Kirenga, the applicant's advocate who reiterates the grounds on the face of the application. Ms. Osoro learned counsel for the state did not oppose the application

I have carefully considered the application *vis-a-vis* the provisions of Section 357 of the Criminal Procedure Code which provides for admission to bail or suspension of sentence pending appeal and states that:-

***(1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate 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:***

This court is thus clothed with the power to grant bail/bond with or without sureties, or to suspend execution of any sentence imposed by the subordinate court pending the hearing of the appeal. In granting bail pending appeal, the court is obliged to consider the circumstances of each case so that the discretion is exercised judiciously and not capriciously. In the case of **Jivraj Shah -vs- Republic [1980] KLR 605**, the Court of Appeal set out the parameters to be considered by an appellate court in applications for bail pending appeal:-

*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 interests 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.*

In **Mutua v R, [1988] KLR 497** the Court of Appeal stated thus:

**“It must be remembered that an applicant for bail has been convicted by a properly constituted court and is undergoing punishment because of that conviction which stands until it is set aside on appeal. It is not wise or to set the applicant at liberty either from the point of view of his welfare or of the state unless there is a real reason why the court should do so.”**

In view of the foregoing, the onus is always on the appellant to demonstrate to the court that there are good reasons why he should not be allowed to continue serving sentence but should be allowed to enjoy his liberty pending the hearing and determination of his or her appeal.

I have considered the proceeding before the trial court and they raise a prima facie issue relating to his identification at the scene of crime. I therefore find that the applicant herein has demonstrated to the court that the appeal has overwhelming chances of success.

For all the foregoing reasons, I have come to the conclusion that the appellant has passed the test for grant of bond pending appeal and it is hereby ordered that he be released on a personal bond of Kshs. 500,000/- with a surety of similar sum pending the hearing and determination of his appeal. It is further ordered that the appellant shall upon release on bond attend mentions before the Deputy Registrar of this court once every month until the appeal is heard and determined or until further orders of the court.

**DATED, SIGNED AND DELIVERED THIS 15th DAY OF June, 2017**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistant - Felix

Appellant - Present

For the appellant - Mr. Kirenga

