

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 4 OF 2016

PETERSON GITARI NJAGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant has through his notice of motion dated 27th January 2016 brought an application for release on bail pending the hearing and determination of his appeal. The application is brought under section 357 of the Criminal Procedure Code (Cap 75) Laws of Kenya. Counsel for the appellant has also cited that the application is also brought under all enabling provisions of the law.
2. The appellant was convicted and sentenced on his own plea of guilt to three counts under the Traffic Act (Cap 403) Laws of Kenya. In count I he was charged with failing to stop as directed by a police officer in uniform contrary to section 52 (2) (A) of the Traffic Act. In Count 2, he was charged with driving a public service motor vehicle without a driver's uniform contrary to section 103 (A) (1) as read with section 103 (A) (7) of the same statute. And finally in Count 3, he was charged with driving a defective motor vehicle on a public road contrary to section 55 (1) as read with section 58 (1) of the same Act.
3. Following his plea of guilty on the three counts, he was sentenced as follows: Counts 1 and 2 Kshs 1,000/- or in default one month imprisonment and in Count 3 he was sentenced to Kshs 100,000/- in default 11 months imprisonment. In sentencing the appellant the trial court took into account that the appellant was a first offender.
4. Mr Onjoro for the Respondent/State did not oppose the appellant's release on bail pending the hearing and determination of the appellant's appeal.
5. The penalty provided for failing to stop when directed to do so is a fine not exceeding Kshs 1,000/- in default a term not exceeding 3 months imprisonment in respect of a first conviction. It is not clear what penalty is provided for in count 2. In count 3 the penalty provided for is a fine not exceeding Kshs 20,000/- or to imprisonment for a term not exceeding nine months or to both. There is a proviso that the sentence of the fines to be imposed for a person who is convicted under sections 55 or 56 shall be according to a prescribed scale for first offenders and for second and subsequent offenders within a prescribed period.
6. The law applicable in cases of bail pending appeal according to *Somo v. R (1972) EA 476* is that the applicant has to demonstrate that his appeal has overwhelming chances of success. In the alternative if he fails in that regard he may also be granted bail pending the hearing and determination of his appeal if he shows that there are exceptional or unusual circumstances in his appeal. It is also a requirement of the law that in imposing a sentence of a fine it should not be excessive.
7. The appellant is a married person with dependant minors and has an unemployed wife. His counsel submitted that the appellant's appeal has high chances of success. He further submitted that his appeal may take some time to be heard because there many other appeals pending in this court and that if the application is not granted the appeal may be rendered nugatory should it succeed given that he may have served most of his sentence by the time the appeal is heard and determined. Finally counsel has submitted that there are no compelling reasons as to why the appellant should not be released since he is keen on attending court as and when required. It was also submitted that the appellant makes about Kshs 1,000/- and that he also grows cabbage for consumption.
8. I have taken into account that the appellant is a married person with two dependant minors and is

married with a wife who is not employed. I have also taken into account that he is a first offender. Finally I have borne in mind the maximum sentence of fines provided in respect of the offences with which he is charged and the fines imposed. After considering all these matters I find that the appellant has made out a case for his release on bail pending the hearing and determination of his appeal given the fact that he is the sole bread winner of the family and is a person without a substantial monetary income. I have not lost the fact that the law forbids excessive fines. The fines imposed appear to be excessive. The appellant has demonstrated that he has an overwhelming chance of the fines being reduced on appeal.

9. In the light of the foregoing matters I hereby grant the appellant's application for bail pending appeal. He will be released on a cash bail of Kshs 5,000/-.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **8th** day of **FEBRUARY .2016**.

In the presence of Mr Otieno for the appellant and Ms. Nandwa for the State.

Court clerk R. Njue

J. M. BWONWONGA

JUDGE

08.02.16