

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 231 OF 2013

PETER FRANCIS KIARIE KAMAUAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. This application which has been brought by way of Notice of Motion dated 8th August 2013, under **Article 49(1) (h)** of the **Constitution** as read with **Section 123, 375(1)** of the **Criminal Procedure Code** (Cap 75) Laws of Kenya. It mainly seeks that the court be pleased to admit the applicant to bail pending the hearing of his appeal upon reasonable conditions.
2. Learned counsel Mr. Serem reiterated the applicant's grounds sworn in the supporting affidavit dated 8th August 2013 that the applicant is a father of three and the sole bread winner of the family and is therefore not a flight risk. That he is sickly and on medication. That he has filed an appeal which might take some time to be determined and lastly, that bail is his constitutional right. In the supporting affidavit the applicant also deposed that he did not fully understand the charges he was pleading to therefore the plea was not unequivocal. Further that he suffers from stomach ulcers.
3. The application was opposed by Miss Maina learned counsel for the state who argued that the applicant was convicted on his own plea of guilt. Further that the court followed the proper procedure in plea taking and therefore the said plea was unequivocal and the appeal is not arguable.
4. The principle consideration in an application for bail pending appeal as stated by the Court of Appeal in the case of **Jivraj Shah vs. Republic [1986] LLR 605**, was *inter alia*, that bail pending appeal would be considered where there were existing exceptional or unusual circumstances upon which the Court of Appeal could fairly conclude that it was in the interest of justice to grant bail. Secondly, that it may be granted where 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. In that instance conditions for granting bail will exist.
5. Bail pending appeal is not a constitutional right as argued by Mr. Serem on behalf of the applicant since he no longer enjoys the presumption of innocence, having lost it when he was convicted. The previous good character of the applicant or the hardships, if any, facing his family are not be considered exceptional or unusual factors, neither would the applicant's observance of his bond term while on trial. These do not amount to unusual circumstances upon which this court could conclude that it is in the interest of justice to grant the bail sought, in light of the plea of guilt which is on record and the conviction already in place.

6. I have perused the lower court proceedings and humbly agree that the proceedings were taken in the proper manner and that the applicant pleaded thereto. I have also perused the grounds of the intended appeal, and the submission of the counsels in the application before me. On the face thereof and without delving into the merits and demerits of the intended appeal it does not appear to have overwhelming chances of appeal.

Reasons wherefore I find that the application is unmerited and dismiss it.

SIGNED DATED and DELIVERED in open court this 14th day of May 2014.

L. A. ACHODE

JUDGE