



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 113 OF 2013

SAMUEL GITHUA GITONGA.....APPELLANT

versus

REPUBLICRESPONDENT

RULING

1. The Appellant was charged with the offence of causing death by dangerous driving contrary to section 46 of the Traffic Act. He pleaded not guilty and was tried, convicted and sentenced to eight (8) years imprisonment.
2. Being aggrieved by the said conviction and sentence he filed this appeal. By an application dated 24th September 2013 the Appellant moved the court to be admitted on bond pending appeal. The application was supported by the affidavit of GEORGE MORARA GORI advocate who deponed that the Appellant was sentenced to eight years without an option of a fine and that the appeal had high chances of success.
3. It was submitted by Mr. Gori that the evidence on record was not enough to sustain a conviction and that out of the five witnesses only one saw what had happened and therefore her evidence cannot be said to have met the standard of beyond reasonable doubt.
4. Mr. Njue on behalf of the state submitted that the Appellant was charged on a breach of duty of care which give the trial magistrate the obligation to take into consideration the nature of the offence and the place of the accident.
5. In an application of this nature the court may grant bond pending appeal if the appeal has high chances of success, whether there are unusual or exceptional circumstances. Further section 356(1) of Criminal Procedure Code confers powers upon the court to grant bail pending appeal on the following terms.

356(1) The High Court or the subordinate court which has convicted or sentenced a person may grant bail or stay execution on sentence or order pending appeal on such terms as to security from the payment of money or the performance or non performance of any act or the suffering of any punishment ordered by or in the sentence or order as may seem reasonable to the High Court or the subordinate court.”

6. In this case there is the evidence of P.W.3 JACKLINE MUMBI WACHIRA whose testimony is that it is the deceased who fell on the motor cycle against the trial courts finding which was not supported by any evidence tendered or judicial notice as follows:

“As if that was not enough, this was a rural are, domestic animals or people are used to move around with least caution; not being used to much vehicular traffic. The accused ought to have been aware of this and should have ridden his motor cycle with this possibility uppermost in his mind”.

7. This to my mind will be an issue in determination of the appeal and therefore the same has an overwhelming chances of success. On the issue of special circumstances, the appellant was sentenced to eight (8) years and there is a likelihood of the same serving either substantial part of the sentence before his appeal is heard and determined.
8. I would therefore allow the application and admit the appellant to bond pending appeal on the following terms.

- a) Bond of Ksh. 200,000/- with one surety of like amount or
- b) In the alternative cash bail of Ksh. 100,000/-
- c) The Appellant to attend mention before the Deputy Registrar of this court once after every 30 days until final determination of the appeal at the dates to be set by the said Deputy Registrar.

Dated, signed and delivered at Nyeri this 15th day of October 2014.

J. WAKIAGA

JUDGE

Court: Ruling read in open court in the presence of Mr. Ombongi for Mr. Gori for the accused and Mr. Njue for the state.

J. WAKIAGA

JUDGE