

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: OMONDI, KIMARU & MUCHELULE,

JJ.A.) CRIMINAL APPLICATION NO. E070 OF

2024 BETWEEN

SAMUEL OULULA WANGUBA.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*(Being an application to be admitted to bail pending hearing
and determination of appeal from the judgment of the High
Court of Kenya at Bungoma (Riechi, J.) on 4th June 2024*

in

HCCRC No. 17 of 2016)

RULING OF THE

COURT

1. The applicant Samuel Oulula Wanguba, was charged in the High Court at Bungoma, along with three others for the offence of murder; however, upon trial, he was, convicted and sentenced to serve five years imprisonment for the offence of manslaughter. Aggrieved by the outcome he has filed an appeal before us. In the meantime, he has filed a Notice of

Motion dated 22nd July 2024, seeking to be admitted to bail,
pending the hearing of his appeal.

2. The application is supported by the grounds on its face as well as the supporting affidavit of the applicant. The applicant claims that the appeal has overwhelming chances of success; that he was initially admitted to bail during the trial and never skipped court attendances, so he is not a flight risk; and is willing to abide by the bail terms imposed by the court. He also submits that the appeal has overwhelming chances of success; and that it will take time before the appeal is heard and determined and as such it would be expedient to grant bail.
3. The respondent in its rather brief submissions does not oppose the application for bail on the grounds that the appellant had previously been out on bond and did not abscond and/or breach the bond terms.
4. The applicant in his memorandum of appeal dated 22nd July 2024 has raised 5 grounds of appeal. The appellant argues that his appeal has high chances of success, that he cannot abscond if granted bail, that there is possibility of sustained delay in determining of the appeal.
5. We have carefully considered the application, the grounds in

support thereof. Rule 5(2)(a) of this Court's Rules allows us
to

order the appellant's release on bail or suspension of a warrant of distress in criminal proceedings pending the determination of the appeal. We hasten to point out that bail pending appeal is a discretionary exercise by the Court; and upon the applicant demonstrating the existence of exceptional circumstances. Indeed, there is no constitutional requirement to grant bail pending appeal, and Article 49(h) of the Constitution creates entitlement to bail pending trial, on the basis of presumption of innocence until proven guilty, which presumption stops once there is a valid conviction. In ***Isaac Tulicha Guyo vs. Republic (Crim. App. No. 16 of 2010)***: this Court stated:

"The Court has to bear in mind that a person who has been convicted by a competent court has lost the presumption of innocence conferred on him by the Constitution and that during the hearing of the pending appeal, the burden would be upon the convicted person to show that the conviction was wrong. It is not, therefore, surprising that it has been stated time and time again that bail pending appeal will only be granted in rare and exceptional circumstances."

6. The principles for granting bail pending appeal were reiterated in the case of ***Jivraj Shah vs. Republic 1986]*** ***KLR 605*** as being: the existence of exceptional or unusual

circumstances upon

which the Court can fairly conclude that it is in the interest of justice to grant bail; two, 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 argued and three, that the sentence or substantial part of it will have been served by the time the appeal is heard and determined.

7. This was echoed in **Dominic Karanja vs. Republic [1986] KLR 612** this Court established the legal principles governing grant of appeal thus:

“that the most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant consideration would be whether there were exceptional or unusual circumstances.”

8. The applicant through the firm of Athunga and Company advocates, argues that the appeal has a high probability of success as he was convicted on insufficient and contradictory evidence, the ingredients of the offence were not proved and his defence was not given due consideration. Having carefully perused the judgment and memorandum of appeal, we are satisfied without pre-empting or influencing the final decision of the bench that will eventually be empaneled to hear the appeal, that there are substantial issues to be argued on

appeal.

However, that alone does not meet the threshold for grant of bail pending appeal.

9. We are required to consider a demonstration of the existence of exceptional circumstances. As to whether the applicant has demonstrated exceptional or unusual circumstances, in **Dominic Karanja vs. Republic** (*supra*) this Court held:

a) 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, and the minor relevant considerations would be whether there were exceptional or unusual circumstances.

b) The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Poor health per se would also not constitute exceptional circumstances where there existed medical facilities for prisoners.

c) A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.

10. We also draw from the decision in **Peter Hinga Ngotho vs. Republic [2015] eKLR**, which held that the fact that the applicant did not breach the bail conditions in the court below is not an exceptional circumstance warranting a decision to admit an applicant to bail pending appeal. In the instant case, the applicant argued that he did not breach the bail terms given by the trial court and dutifully attended court. This was

the only

usual and exceptional alluded to by the applicant; and borrowing from the afore-cited cases, we are persuaded that the applicant has not demonstrated any unusual or exceptional circumstances to warrant the grant of bail pending appeal.

11. The upshot is that the application dated 22nd July 2024 has no merit, and it is hereby dismissed.

Dated and delivered at Kisumu this 25th day of April, 2025.

H. A. OMONDI

.....
JUDGE OF APPEAL

L. KIMARU

.....
JUDGE OF APPEAL

A. O. MUCHELULE

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

DEPUTY REGISTRAR