



**Ibrahim v Republic (Criminal Application E007 of 2021)  
[2022] KECA 674 (KLR) (8 July 2022) (Ruling)**

Neutral citation: [2022] KECA 674 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E007 OF 2021  
HM OKWENGU, S OLE KANTAI & A MBOGHOLI-MSAGHA, JJA  
JULY 8, 2022**

**BETWEEN**

**YUSUF AGRIPPA IBRAHIM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for Bail pending appeal and stay of execution of the Judgment of the High Court of Kenya at Nairobi (Ongeri, J.) dated 9th July, 2021 in H.C.CR Appeal No. E001 of 2020)*

**RULING**

1. On September 9, 2020, Yusuf Agripa Ibrahim (Yusuf) was convicted by the Magistrates' Court at Kericho, on a charge of stealing and sentenced to serve three (3) years' imprisonment. He appealed against his conviction and sentence in the High Court at Kericho in Criminal Appeal No E001 of 2020 but his appeal was dismissed and the sentence and conviction were confirmed.
2. Yusuf who is dissatisfied with the judgment of the High Court has filed an appeal to this Court. He has already served one-year imprisonment, and has now filed an application in this Court seeking to be released on bail, pending the hearing of his appeal against the judgment of the High Court, and an order for stay of execution of the judgment of the High Court pending the hearing of the appeal.
3. In an affidavit sworn by his advocate Julius Mongare Motanya, in support of his application, it is deposed that Yusuf has an appeal that has high chances of success, and that due to the time that may be taken in hearing the appeal, he may finish serving his sentence before the appeal is heard, and his appeal shall thereby be rendered nugatory. It is also indicated that the applicant had spent time in remand prior to the sentencing, and that he is the sole bread winner of his family and has four small children to look after. The applicant has also exhibited a memorandum of appeal in which he faults the judgment of the High Court on four grounds.



4. The respondent has opposed the application through a replying affidavit sworn by Cheruiyot Mercy Chelangat, a prosecution counsel, as well as written submissions. In brief it is contended that: the applicant has not met the threshold for grant of the orders sought; grant of bail pending appeal is discretionary and the applicant's innocence was compromised upon conviction; the applicant has not demonstrated any peculiar or extraordinary circumstance in his application to warrant grant of bail pending appeal; the appeal does not have overwhelming chances of success; there is no probability of the applicant serving the sentence before the appeal is determined; and that if the applicant is released on bail, the chances of him absconding are very high.
5. In *Jivraj Shah v Republic* [1986] KLR 605 this Court stated the conditions for grant of bail pending appeal as follows:
  - i. The existence of exceptional or unusual circumstances upon which the Court may rely upon
  - ii. 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 that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.
  - iii. 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 the weight and relevance of the points to be argued.”
6. At this stage, Yusuf having been convicted and sentenced to a term of imprisonment, his position has shifted. Bail is no longer a right for him but would only be granted pending appeal in very exceptional circumstances. On the face of the application and the supporting affidavit, Yusuf has not demonstrated any exceptional circumstance that would justify granting bail pending appeal. The claim that he was the sole breadwinner of his family and that he diligently attended court during trial, are not exceptional circumstance. His apprehension that he may finish serving his sentence before his appeal is heard is not anchored on any fact
7. In *Dominic Karanja v Republic* [1986] KLR 612, which was referred to by the respondent, this Court stated inter alia:
  - (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. Ill health per se would also not constitute an exceptional circumstance 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;



(d) ....”

8. Although Yusuf has exhibited a memorandum of appeal, he has not demonstrated, and we are not persuaded, that his appeal has overwhelming chances of success such as to justify his release on bail. As regards the prayer for stay of execution, in its judgment the High Court upheld the judgment of the lower court and dismissed the applicant’s appeal. This is a negative order not capable of execution, and therefore the prayer for stay of execution of the judgment of the High Court is misconceived.
9. In light of the foregoing, we find no merit in this application. It is accordingly dismissed.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF JULY, 2022.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**A. MBOGHOLI MSAGHA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

