



REPUBLIC OF KENYA



**KENYA LAW**  
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**Langat v Republic (Criminal Application 308 of 2019)  
[2022] KECA 1043 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1043 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION 308 OF 2019  
K M'INOTI, M NGUGI & F TUIYOT'T, JJA  
SEPTEMBER 23, 2022**

**BETWEEN**

**HILLARY LANGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Application for bail/bond pending appeal from the Judgment of the High Court of Kenya at Kisii (Majanja, J.) dated 28th May 2019 in Cr. Case No. 5 of 2019)*

**RULING**

1. The applicant, Hillary Langat, was convicted and sentenced to 35 years' imprisonment by the High Court of Kenya at Kisii (Majanja, J.), for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The information on the basis of which he was prosecuted stated that on February 28, 2018, at Milimani area of Kilgoris Town in Narok County, he murdered BK. The evidence adduced by the prosecution showed that the deceased, a child of 14 years, died from a stab wound in the abdomen and that shortly before the deceased was stabbed, two eye witnesses, one of them known to the applicant, saw the applicant enter the house of the deceased's mother at 10.00 am. Shortly thereafter, the deceased screamed in great pain and the witnesses saw the applicant running out of the house. The applicant disappeared from the area and was apprehended much later in Kuresoi, Nakuru County.
2. The applicant was aggrieved by his conviction and sentence and lodged an appeal in this Court. Pending the hearing and determination of the appeal, he applied to be released on bail or bond pending appeal. This ruling relates to the said application.
3. The application for bail pending appeal is said to be taken out under section 357 of the Criminal Procedure Code and Article 49(1) (h) of Constitution of Kenya. Even a cursory look at those provisions confirms that they have no relevance in an application for bail pending appeal in the Court of Appeal.



Section 357 of the *Criminal Procedure Code* applies to applications for bail made before the High Court or a subordinate court by a person who has preferred an appeal after conviction by any of those courts. Article 49(1) (h) relates to bail pending charge or trial, which is not the case here. Obviously, the application ought to have been made under rule 5(2) (a) of the *Court of Appeal Rules*. To the extent that the respondent did not raise any objection, and bearing in mind the edict in Article 159 (2) (d) of the *Constitution* which directs courts to administer justice without undue regard to procedural technicalities, we shall treat the application as made under rule 5(2)(a).

4. In his application, the applicant states that he is sickly and in need of specialised treatment, that he needs to attend to personal and domestic matters pending the determination of his appeal, that he is ready and willing to abide by any conditions that the Court may impose, and that he is the sole breadwinner of his family, which risks becoming destitute should his application for bail pending appeal be denied. In the affidavit in support in of the application he deposes that his appeal has great chances of success. He, however, did not annex any reports to vouchsafe for his medical condition.
5. As regards the chances of success of the appeal, the applicant's memorandum of appeal faults the learned judge for failure to warn himself of the possibility of error in the identification of the applicant and for failure to consider the circumstances surrounding the applicant's identification. He adds that the prosecution did not prove its case beyond reasonable doubt and that the learned judge was in error in disbelieving his defence, which cast doubt on the prosecution case. Lastly, he faults the learned judge for failing to carefully analyse the evidence and to call crucial witnesses.
6. At the hearing of the appeal which was conducted virtually, the appellant's learned counsel, Mr. Mukoya rehashed the above points and urged us to allow the application because the applicant's appeal has overwhelming chances of success.
7. Mr. Ligami, learned counsel for the respondent, opposed the application, contending that the applicant had not presented any exceptional circumstances to justify bail pending appeal. In his view, the applicant had also failed to demonstrate that his appeal had overwhelming chances of success. He relied on the decision of this Court in *Daniel Dominic Karanja v. Republic* [1986] eKLR and urged us to dismiss the application.
8. The principles which guide the Court in an application for bail pending appeal are very distinct from the principles in an application for bail pending trial. In the latter application, the accused person's guilt is yet to be proved and so the law presumes him to be innocent. He has a right to bail unless the prosecution establishes compelling reasons why that right should be denied. In the former application, however, the applicant has already been convicted by a court of competent jurisdiction. The presumption of the law at that stage is that the applicant is properly convicted. Hence the onus is on the applicant to satisfy the Court that his appeal has overwhelming chances of success or that there are special circumstances that warrant grant of bail pending the hearing of the appeal.
9. These principles have been considered and restated in many decisions in this jurisdiction. One example is *Somo v. Republic* [1972] EA 476 where Trevelyan, J. stated:

“...generally speaking, whatever grounds may properly be taken into account in favour of granting the application...the most important of them is that the appeal will succeed. There is little, if any, point in granting the application if the appeal is not thought to have an overwhelming chance of being successful, at least to the extent that the sentence will be interfered with so that the applicant will be granted his liberty by the appeal court...It seems to me that when these applications are conspired it must never be forgotten that the presumption is that when the applicant was convicted, he was properly convicted. That



is why, where he is undergoing a custodial sentence, he must demonstrate, if he wishes to anticipate the result of his appeal and secure his liberty forthwith, that there are exceptional or unusual circumstances in the case. That is why, when he relies on the ground that his appeal will prove successful, he must show that there is an overwhelming probability that it will succeed.”

10. This reasoning has been restated, approved and followed in such decisions as *Daniel Dominic Karanja v. Republic* [1986] eKLR, *Jivraj Shah v. Republic* [1986] KLR 605 and *Mutua v. Republic* [1988] KLR 497.

11. As we have already stated, there is no evidence before us on the health condition of the applicant. In *Daniel Dominic Karanja v. Republic* (supra) the Court rejected as exceptional, the grounds that the applicant is relying upon in this application. The Court delivered itself thus:

“The previous good character of the applicant and the hardship, if any, facing the wife and children of the applicant are not exceptional or unusual factors...A solemn assertion by an applicant that he will not abscond if he is released is not sufficient ground, even with support of sureties, for releasing a convicted person on bail pending appeal. The applicant was certified to be fit by a doctor on September 23, 1986 and so no issue of ill-health arises. We are not to be taken to mean that ill-health per se would constitute an exceptional or unusual circumstance in every case. There exist medical facilities for prisoners in the country.”

12. As regards the chances of success of the applicant’s appeal, all we can say at this stage is that the same may or it may not succeed. That is not the same as saying it has overwhelming chances of success. Accordingly, we are satisfied that the applicant has not demonstrated before us an appeal with overwhelming chances of success, or any other exceptional circumstances that would justify an order for bail pending appeal. The appeal therefore fails and is hereby dismissed. It is so ordered.

**DATED AT KISUMU THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022**

**K. M’INOTI**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

