



REPUBLIC OF KENYA



**Chege v Republic (Criminal Application E006 of 2022)
[2022] KECA 1350 (KLR) (2 December 2022) (Ruling)**

Neutral citation: [2022] KECA 1350 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E006 OF 2022
MSA MAKHANDIA, AK MURGOR & S OLE KANTAI, JJA
DECEMBER 2, 2022**

BETWEEN

DANIEL MWANGI CHEGE APPLICANT

AND

REPUBLIC RESPONDENT

(Application for bail pending appeal from the Judgment of the High Court of Kenya at Garissa (Abida Ali-Aroni, J) dated 24th February, 2022 in HC. CR.C. No. 15 of 2014)

RULING

1. The applicant, Daniel Mwangi Chege, was charged before the High Court in Garissa, with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. He was convicted of the offence on February 24, 2022 and sentenced to 25 years' imprisonment.
2. He is now before this court with an application dated May 23, 2022 which seeks grant of bail pending determination of his appeal No E011 of 2022.
3. The brief background of the matter is that the applicant and the deceased, one, Lawrence Oluoch Ogoro, worked at a mining site within Garissa, with the deceased being the site manager. The court was told that 400 litres of diesel went missing from the site and the deceased was tasked to investigate the issue but he vanished on August 6, 2014, only for human body parts to be found on August 14, 2014 in a shallow grave. The body parts were confirmed, through DNA analysis, to be those of the deceased. Witnesses told the court that around August 6, 2014, the site excavator broke down, and the deceased left the site in the company of the applicant to find another excavator at a neighboring site, but the applicant returned alone, claiming not to know the whereabouts of the deceased. The High Court upon considering the evidence before it, found that the applicant was guilty of killing the deceased.
4. In the present application, the applicant urges the court to exercise its discretionary power under rule 5(2) (a) of the *Court of Appeal Rules* and grant him bail pending appeal. The court is guided by its



past decisions on considerations in exercise of this discretion as was stated in *Somo v Republic* [1972] EA 476:

' Where he (applicant) is undergoing a custodial sentence he must demonstrate, if he wishes to anticipate the result of his appeal and secure his release 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.'

5. The present applicant contends that his appeal has an overwhelming chance of success with exceptional factors for the court's consideration. He states that his appointed counsel was not up to the task and did not file submissions thus denied him a fair hearing; that the prosecution evidence was weak and circumstantial and that the deceased's cause of death was not established. He also implores the court to consider that he is the sole breadwinner of a young family who are suffering in his absence and are at risk of eviction from their home. He states that he will continue to attend court if released on bail. He filed an affidavit by Margaret Nyaruai Weru, who deponed that she is his wife and attached the birth certificates of three children. He also states that the appeal is likely to delay due to the court workload.

The applicant filed submissions dated July 8, 2022 in support of his application, which we have considered.

6. In the case of *Daniel Dominic Karanja v Republic* [1986] eKLR, while considering an application for bail pending appeal, the court, inter alia, stated that:

' The most important issue here is if the appeal has such overwhelming chances of success that there is no justification for depriving the applicant of his liberty. The minor relevant considerations would be whether there are exceptional or unusual circumstances. 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: see *Somo v Republic* [1972] EA 476 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.'

7. Similarly, the court in *Jivraj Shah v Republic* [1986] eKLR while dealing with an application for bail, held that:

' 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 urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision in *Somo v Republic* [1972] E A 476 which was referred to by this court with approval in Criminal Application No NAI 14 of 1986, *Daniel Dominic Karanja v Republic* where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued.'

8. Having considered the application, the brief facts of the matter, the applicant's intended arguments and the guiding principles cited above, this court is not convinced that there are any exceptional circumstances to warrant grant of bail pending appeal. The applicant has not met the threshold required and the application dated May 23, 2022 is dismissed.



DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF DECEMBER, 2022.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

AK MURGOR

.....

JUDGE OF APPEAL

S ole KANTAI

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

