



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: E.M. GITHINJI, HANNAH OKWENGU &

J. MOHAMMED, JJA.

CRIMINAL APPEAL (APPLICATION) NO. 156 OF 2016

BETWEEN

EMMANUEL OCHIENG AWUONDO APPELLANT

AND

REPUBLIC RESPONDENT

not apply because it relates to the first appeals to this Court.

As **Section 361 (1)** of CPC provides, a second appeal to this Court lies on a matter of law. Nevertheless, **Section 361 (6)** provides:

“Where an appeal under this section is pending, a judge of the High Court may grant bail to a convicted person who is a party to the appeal.”

That section does not mention the Court of Appeal.

[6] The foregoing notwithstanding, there is ample authority, for instance **Dominic Karanja v. Republic [1986] KLR 612** and **Kibera v. Republic [1990 – 1994] EA 220** that the Court has power donated by Rule 5 (2) (a) of the Rules to release a second appellant on bail pending appeal.

In **Kibera v. Republic (supra)**, this Court held:

“The appellate court may grant bail pending a second appeal if it is satisfied that there is a substantial point of law to be argued which could result in the conviction being quashed.”

[7] We have studied the record of appeal in Criminal Appeal No. 156 of 2016 and the grounds of appeal in the memorandum of appeal.

The prosecution’s case, in a nutshell, was that the applicant was one of the two people who were transporting 339 kilograms of cannabis sativa in a motor vehicle in which the drugs were recovered. The applicant’s case and that of the co-accused were that they were not inside the motor vehicle in which the drugs were recovered. The two courts below made a finding that the applicant and co-accused were occupants in the motor vehicle.

In the circumstances, the applicant has not satisfied the threshold for admission to bail pending the determination of the appeal.

[8] In the premises, the application is dismissed. We so order.

DATED and Delivered at Kisumu this 25th day of October, 2018.

E. M. GITHINJI

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR