



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: GICHERU, KWACH & BOSIRE, J.J.A.
CRIMINAL APPLICATION NO. NAI. 25 OF 2000**

BETWEEN

DAVID NGUGIAPPLICANT

AND

THE REPUBLICRESPONDENT

(Application for Bail pending an intended Appeal from
a Judgment of the High Court in its appellate jurisdiction
at Machakos (Hon. Mr. Justice Mwera) dated 30th October,
2000

in

H.C.R.A. NO. 125 OF 2000)

RULING OF THE COURT

The applicant, David Ngugi, was convicted by the Senior Principal Magistrate at Machakos of causing death by dangerous driving c/s 46 of the Traffic Act and sentenced to 3 years imprisonment and disqualified from holding a driving licence for 4 years after serving the prison term.

The applicant appealed to the superior court against both conviction and sentence. Mwera J dismissed the appeal against conviction and sentence in relation to imprisonment, but reduced the period of disqualification to 3 years being the maximum provided by law.

The application for bail pending appeal is brought on the basis that the intended appeal "has prospects of success." That is how Mr Njenga has put it. The grounds of intended appeal set out in paragraph 8 of the supporting affidavit sworn by Mr Njenga clearly reveal that the areas of dispute relate purely to matters of fact and severity of sentence. In a second appeal, the jurisdiction of this Court is severely limited in relation to these matters, and unless it can be shown that this application falls within the ambit of the case of *Abu Somo v Republic* [1972]EA 476, this application cannot succeed. It has to be shown that the intended appeal has overwhelming chances of success. As we are not satisfied as to this, the application fails and is dismissed.

Dated and delivered at Nairobi this 1st day of February, 2001.

J. E. GICHERU

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JUDGE OF APPEAL

R. O. KWACH

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JUDGE OF APPEAL

S. E. O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR