



M'ananga & another v Director of Public Prosecutions (Criminal Appeal E146 of 2023) [2024] KEHC 2247 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E146 OF 2023
TW CHERERE, J
FEBRUARY 29, 2024**

BETWEEN

JOSEPH KANONI M'ANANGA 1ST APPELLANT

ERIC MWITI KANONI 2ND APPELLANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. Joseph Kanoni M'Ananga and Eric Mwit Kanoni (1st and 2nd Appellant/Applicant respectively) were charged with Arson in Maua CMCR.C.No. 2983 of 2016 for which they were convicted on 30th November, 2023 and each fined KES. 120,000/- in default 40 months imprisonment.
2. By Notice of Motion dated and filed on 14th December, 2023 brought under Articles 49 and 50 of the *Constitution* and Section 357 of the *Criminal Procedure Code*, Appellants/Applicants have moved the court for orders that they be admitted to bail pending the hearing and determination of this appeal mainly on the grounds that Appellants/Applicants were convicted on a defective charge sheet and that complainant did not prove ownership of the land or house in question.
3. The application is supported by an affidavit sworn by Joseph Kanoni M'Ananga (1st Appellant/Applicant) sworn on 14th December, 2023 in which he reiterates the grounds on the face of the application.
4. Ms. Rita for the Respondent opposed the application on the grounds that Appellants/Applicants were properly convicted and sentenced, there are no exceptional circumstances to warrant the grant of bail pending appeal, Appellants/Applicants will not have served a substantial part of the sentence before the appeal is heard and that it has not been demonstrated that the appeal has high chances of success.



Analysis and Determination

5. I have duly considered the application, affidavit in support, annexures thereto, and the response on behalf of the Respondent.
6. Section 357 of the [Criminal Procedure Code](#) provides: -
 - (1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal
7. This court is thus clothed with the power to grant bail/bond with or without sureties, or to suspend execution of any sentence imposed by the subordinate court pending the hearing of the appeal. In granting bail pending appeal, the court is obliged to consider the circumstances of each case so that the discretion is exercised judiciously and not capriciously.
8. The legal principles that govern bail pending appeal are settled and have been stated by the Court of Appeal in numerous cases among them [Jivraj Shah v Republic](#) [1986].
9. In the case of in the case of [Ademba v Republic](#) [1983] KLR, 442 the Court of Appeal held that:

“Bail pending appeal may only be granted if there are exceptional or unusual circumstances...
The likelihood of success in the appeal is a factor to be taken into consideration in granting bail pending appeal.”
10. A convicted person who has appealed has the right to seek bail pending appeal, but, the court has the discretion to order release or decline. (See section 257 of the [Criminal Procedure Code](#) (CPC). This means that in as much as convict has the right to appeal as provided by article 50(2) (q) of the [Constitution](#), bail pending appeal is not a constitutional right since the offender has been found guilty, convicted and sentenced, therefore, the presumption of innocence no longer exists.
11. In view of the foregoing, the onus is always on the Applicant to demonstrate to the court that there are good reasons why he/she should not be allowed to continue serving sentence but should be allowed to enjoy his/her liberty pending the hearing and determination of his or her appeal.
12. Whereas it is expected that Appellants would only appeal when an appeal has high chances of success and that every person released on bond abides by the terms of the bond, a perusal of the application before the court reveals that the Appellants/Applicants challenge the validity of the charge sheet which in my considered view is a matter that would better be addressed conclusively in an appeal.
13. For the foregoing reasons, the Notice of Motion dated and filed on 14th December, 2023 is disallowed.

DELIVERED IN MERU THIS 29TH DAY OF FEBRUARY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances:-

Court Assistants - Kinoti/Munene

Appellants/Applicants - Present



For Appellants/Applicants - Mr. Thangichia for Thangichia M.David & Co. Advocates
For DPP - Ms. Rita (PC-1)

