



**Mugambi v Republic (Criminal Appeal E121 of 2023)
[2024] KEHC 4079 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E121 OF 2023
EM MURIITHI, J
APRIL 25, 2024**

BETWEEN

ERICK MUTWIRI MUGAMBI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted of 9 counts of the offence of causing death by dangerous driving contrary to Section 46 of the *Traffic Act* and a 10th count of driving without due care and attention contrary to Section 49 (1) of the *Traffic Act*. He was sentenced to pay a fine of Ksh. 100,000 or in default to serve 3 years imprisonment for each of the 9 counts and Ksh. 50,000 or in default to serve 1 year imprisonment for the 10th count.
2. He has filed a notice of motion under certificate of urgency dated 29/1/2024 in this court seeking that, “2) The Applicant herein be granted bail pending the hearing of the Appeal E121/2023.”
3. He contends that his appeal has high probability of success and he is a man of good character as well as the sole bread winner of his family and 2 small children to look after. He complied with the conditions of bail placed by the trial court and will continue to do so if he is released on bail pending appeal. He will not abscond court if released on bail as he resides in Meru County, Igoji with his family, and he will cooperate with the terms of court to have this matter determined in good time.
4. There was no replying Affidavit.

Determination

5. The principles to be considered in an application for bail pending appeal pursuant to the provisions of Sections 356 and 357 of the *Criminal Procedure Code* were set out in *Jivraj Shah v R* (1986) KLR



605 which considered earlier decisions of the Court and expounded on the factor of overwhelming chances of success and held as follows: -

“There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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) EA 476 which was referred to by this court with approval in Criminal Application 5 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. It is almost self defeating to attempt to define phrases or to establish formulae.”

6. The Applicant was convicted on 13/4/2023 and sentenced on 23/8/2023. It is highly unlikely that he will have served a substantial portion of the sentence before the appeal is heard and determined.
7. This court is minded that the compliance of the Applicant with the bail conditions by the trial court is not an exceptional circumstance, as counseled by the Supreme Court of India in *Krishnan v The People* quoted by the Court (John M. Mativo J. as he then was) in [*Peter Hinga Ngatho v Republic*](#) (2015) eKLR.
8. The court finds that the Applicant has not shown any exceptional circumstances to warrant his release on bail pending appeal.

Orders

9. Accordingly, for the reasons set out above, the Court finds that the Applicant's application dated 29/1/2024 is without merit and it is dismissed.
10. However, the Applicant's appeal will be heard on priority basis, in line with [*Thambura Leornard Mucui v Republic*](#) (2021) eKLR.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Masila with Ms. Rita for DPP.

Ms. Mugo for the Appellant.

