



Case Number:	Criminal Application Nai 14 of 1986
Date Delivered:	24 Oct 1986
Case Class:	Criminal
Court:	Court of Appeal at Nairobi
Case Action:	Judgment
Judge:	James Onyiego Nyarangi, Harold Grant Platt
Citation:	Daniel Dominic Karanja v Republic [1986] eKLR
Advocates:	Mr Gathaara for the Respondent
Case Summary:	<p>Dominic Karanja v Republic</p> <p>Court of Appeal, at Nairobi October 24, 1986</p> <p>Nyarangi, Platt & Gachuhi JJA</p> <p>Criminal Application No NAI 14 of 1986</p> <p>(Application for bail pending appeal in an intended appeal from a conviction and sentence of the High Court at Nairobi)</p> <p><i>Bail - bail pending appeal – application for - issues the courts will consider in such application – whether intended appeal having overwhelming chances of success – whether applicant’s good character, ill health and family hardship are exceptional circumstances.</i></p> <p>The appellant was convicted of the offence of obtaining by false pretences and sentenced to 2 years’ imprisonment. His first appeal to the High Court was summarily rejected and he applied to the Court of Appeal to be released on bail pending the hearing of his appeal against the decision of the High Court.</p> <p>He stated that his appeal had overwhelming</p>

	<p>chances of success, that if his appeal succeeded he would have served a substantial part of the sentence, that he was of good character and in poor health and that his family was facing hardship.</p> <p>Held:</p> <p>1. The most important issue was that if the appeal had such overwhelming chances of success, there was no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances.</p> <p>2. The previous good character of the applicant and the hardships, if any, facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners.</p> <p>3. A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal.</p> <p>4. Upon considering the relevant material in this case, there was no overwhelming chance of the appeal being successful.</p> <p><i>Application refused.</i></p> <p>Cases</p> <p><i>Somo v Republic</i> [1972] EA 476</p> <p>Statutes</p> <p>1. Penal Code (cap 63) section 313</p> <p>2. Criminal Procedure Code (cap 75) section 352(2)</p> <p>Advocates</p> <p><i>Mr Gathaara</i> for the Respondent</p>
Court Division:	Criminal
History Magistrates:	-

County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application Refused.
History County:	Nairobi
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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IN THE COURT OF APPEAL

AT NAIROBI

(Coram:Nyarangi, Platt & Gachuhi JJA)

CRIMINAL APPLICATION NAI 14 OF 1986

BETWEEN

DANIEL DOMINIC

KARANJA.....APPLICANT

AND

REPUBLIC.....RESP

ONDENT

(Application for bail pending appeal in an intended appeal from a conviction and sentence of the High Court at Nairobi)

JUDGMENT

The applicant, Daniel Dominic Karanja, asks this court to release him on bail pending the hearing of his appeal against summary rejection of his appeal pursuant to section 352(2) of the Criminal Procedure Code (cap 75). He was convicted of three counts of obtaining by false pretences contrary to section 313 of Penal Code (cap 63) and sentenced to 2 year's imprisonment on each count, the sentences to be served concurrently. His reasons for the application as contained in his affidavit in support of the application are that his appeal to the High Court was summarily rejected, that his appeal has overwhelming chances of success, he has served 7 months of the sentence, that if his appeal succeeds he will have served a substantial part of the sentence, that he is in poor health, was of good character before conviction, will not abscond if released on bail and that he can provide acceptable sureties. In his address to the court, the applicant said his family is facing hardship, that he was on bond during the trial and did not abscond and that the lower courts misapprehended the evidence of identification.

Learned State Counsel, Mr Gathaara urged that the application should be dismissed for the reason that the appeal has no likelihood of succeeding. Mr Gathaara submitted that the identification of the appellant was proved beyond any shadow of doubt.

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] E A 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. The applicant was certified to be fit by a doctor on September 23, 1986 and so no issue of illhealth arises. We are not to be taken to mean that ill-health per se would constitute an exceptional or unusual circumstance in every case. There exist medical facilities for prisoners in the

country.

This court has the same authority and jurisdiction as is vested in the High Court. So notwithstanding the summary rejection of the appeal by the High Court, this court will be free to hear or not to hear the appeal. The fact of summary rejection will not influence the result of the appeal.

We have perused the proceedings and the judgment before the trial court and considered all that against the grounds of appeal, the affidavit in support of the application, the applicant's submission and the reply by learned state counsel. We are respectfully of the view that at this stage there is not before us an overwhelming chance of the appeal being successful. Therefore the application is refused.

Dated and Delivered in Nairobi this 24th day of October 1986.

J.O.NYARANGI

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JUDGE OF APPEAL

H.G.PLATT

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JUDGE OF APPEAL

J.M.GACHUHI

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original

DEPUTY REGISTRAR



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