

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC CRIMINAL APPLICATION NO. 49 OF 2022**

*(Originating from Criminal Case No. 58 of 2022 pending in the High Court of Tanzania, Dar es Salaam, District Registry)*

**MOHAMED HUSSEIN @MUDY BEST .....APPLICANT**

***VERSUS***

**REPUBLIC .....RESPONDENT**

*Date of last Order: 13/6/2022*

*Date of Ruling: 22/6/2022*

**R U L I N G**

**MGONYA, J.**

This is the Application for Bail Pending Appeal brought under the Certificate of Urgency. The same has been brought under **section 368(1)(a)(i) of the Criminal Procedure Act, Cap. 20 [R.E. 2019]**, seeking from this honorable court's orders:

- 1. That the Honourable Court be pleased to release the Applicant on bail pending hearing of his appeal, Criminal appeal No. 58 of 2022 filed and pending in***

***the High Court of the United Republic of Tanzania,  
District, Registry, at Dar es Salaam.***

***2. Any other Order(s) the Honorable Court deems proper  
to grant in the circumstances of the Application.***

The Chamber Summons is brought at the instance of the Applicant herein and it supported by the Affidavit duly sworn by Applicant's Advocate, **Mr. MOSES GUMBAH**.

When the matter came for hearing today, as the matter was under certificate of urgency, I ordered the same be disposed off by way of written submissions; whereby the Applicant was represented by the learned Advocate **Mr. Moses Gumbah** while the Republic was represented by **Ms. Dhamiri Masinde** the learned State Attorney.

In support of the Application, Mr. Gumbah, the learned Counsel referring to the attached Affidavit before the court, averred that the Applicant has been convicted by the District Court of Kigamboni on 14<sup>th</sup> March, 2022, whereby he was sentenced to ten years' imprisonment or paying twenty-five Million Shillings as fine for the offences of cyber bullying and publishing pornography.

Submitting further, Mr. Gumbah informed the court that the Applicant appeal is not frivolous rather has high chances of success as the said offence of cyber bullying and publication of pornography were not proved to the required standard of Criminal cases as the trial court relied on a screenshot image and not WhatsApp image as per the charge filed in court.

In response, Ms. Dhamiri Masinde the learned State Attorney submitted that, the applicant in his affidavit failed to establish any exceptional or unusual circumstances to enable him to be granted bail pending appeal, which is an essential element in establishing grounds for bail pending Appeal. Further that the Applicant has not sufficiently how elaborated how his liberty will either be prejudiced or how he will suffer irreparable loss if he stays in prison pending the determination of his Appeal.

The issue before me for determination is **whether there is a reasonable /sufficient cause for granting bail pending appeal to the Applicant.**

I am alive of the law and conditions applicable in this kind of Application. The law on this matter is:

**First**, starting from the premises that while bail pending **trial** is a right to the accused person, **bail pending appeal is not.** The

applicant in a bail pending appeal, it should not be forgotten, is a convict already. The onus is, therefore, on him to prove that justice demands that he be out on bail rather than inside.

**Second**, that Bail pending appeal should only be granted for **"exceptional and unusual reasons"**. Courts of law have not tabulated what these exceptional and unusual reasons could be; but of course, each case, therefore, would have to be considered on its own merits and circumstances (***RAGHBIR SINGH HOMBE V R [1958] E.A. 337***);

**Third**, neither the complexity of the case nor the good character or social standing of the applicant nor alleged hardship of parents or dependents justifies grant of bail pending appeal;

**Fourth**, delay before the actual appeal is heard is not in itself a good ground for granting bail pending appeal. (***GIRDHER BHANJI NASRANI V. R. [1960] E.A 320***).

**Fifth**, that Bail pending appeal could be granted if there are overwhelming chances of success in the intended appeal. On this you may wish to see ***CASES R. V. SAKERBAI M. A. GANGI [1967] H. G. D. N. 243 HASSANALI HALJI V. R. [1968] H. C. D. N 174; ATLILIO S/O MOSOA R V [1968] H. C.D N. 295 MIPAWA V R [1971] H. C. D N 62;***

But, it cannot be said, where an argument on the facts of a case would need a careful analysis at the appellate level, that it would be easy to say that an appeal has overwhelming chances of success.

**Sixth**, there is no principle of law which says that a person released on bail pending appeal will not be sent back to prison if his appeal fails.

My considered view on the subject is that one suggested by our brother Samatta, J (as he then was) in ***ABEL MWANGENDE V. R MISC. CRIMINAL CAUSE NO. 326/1988 - Dodoma***, when he says that:

***"The task of deciding whether a person who has been convicted should be granted bail involves balancing the considerations of the liberty of the individual and proper administration of justice."***

I have gone through the records of this Application including the Affidavit and the submissions from both learned Counsel. From the same, I have come to conclusion that, in this Application, the Applicant has failed to show any good cause for the court to grant him the application sought, i.e bail pending Appeal. This is so as

the reason given, that his Appeal has a great chance of success is not sufficient and reasonable in law especially in considering the above mentioned legal categories for granting bail pending appeal.

In the event therefore, **I proceed to dismiss the instant Application for being misconceived.**

The Applicant is to prepare himself for the Appeal before the court.

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

**L. E. MGONYA**

**JUDGE**

**22/6/2022**

**Court:** Ruling delivered in my chambers in the presence of the Moses Gumbah Advocate for Applicant, Ms. Imelda Mushi State Attorney for the Respondent and Ms. Veronica RMA, this 22<sup>nd</sup> day of June, 2022.



A handwritten signature in blue ink, identical to the one above.

**L. E. MGONYA**

**JUDGE**

**22/6/2022**