



**Rogisho v Republic (Revision Case E082 of 2023)  
[2024] KEHC 16093 (KLR) (Crim) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16093 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
REVISION CASE E082 OF 2023  
CM KARIUKI, J  
DECEMBER 19, 2024**

**BETWEEN**

**PETER KAMAU ROGISHO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the Judgment of Honourable H.O. Barasa Senior Principal Magistrate's Court at Engineer delivered on 28TH August 2023 in the Chief Magistrate Court at Nyahururu SOA Case No. E069 of 2022)*

**RULING**

1. The Appellant was charged with offence of defilement contrary to section 8(1) and 8(2) [Sexual Offences Act](#) No. 3 of 2006.
2. Particulars being that on 24/7/2022 at Miharati area Kipipiri Sub- County Nyandarua County intentionally caused his penis penetrate the vagina of B W W a girl child aged 5 years.
3. Alternatively committing an indecent act with a child contrary to Section II (1) [Sexual offence Act](#) No. 3 of 2006.
4. He pleaded not guilty and matter was heard to conclusion and he was convicted and sentenced to 20 years instead life sentence.
5. Being aggrieved he has filed instant appeal and along with it he filed application for bail/Bond pending appeal. His only ground is that he is old aged 67 years and sickly and requires medication though he says he has no medical documents to support his assertion. In Kenya, the principle of granting bail pending appeal is based on the [Criminal Procedure Code](#) (CPC) Section 357. This section states that



the High Court or the subordinate court that convicted the accused can order bail or suspend the sentence pending appeal.

6. When deciding whether to grant bail pending appeal, the court considers several factors, including:  
Appeal prospects: Whether the appeal is frivolous or has a reasonable chance of success  
Bail compliance: Whether the applicant complied with the terms of the lower court's bail  
Applicant's character: The applicant's character  
Delay in appeal: Whether there is a possibility of a substantial delay in the appeal's determination

Each case is considered on its own facts and circumstances.

In the case of *Ademba v Republic* (1983) KLR, 442, the Court of Appeal held that bail pending appeal could only be granted in exceptional circumstances.

7. The court has look at the record and the evidence on record. First the appellant trial court record is available and appeal can be heard anytime his advocate is ready.
8. The evidence on record is a scenario where he was allegedly caught red handed defiling the victim ( a minor. aged 5 years) .In sum, the court finds that,, no possibility of appeal having over whelming chances of success has been demonstrated and also as for the age and illness, there is no evidence to support his assertions.
  - i. Thus, the court is not persuaded to grant bail pending appeal. Instead the court directs that the appeal to be heard on priority BASIS.

**RULIG DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 19<sup>TH</sup> DAY OF DECEMBER 2024**

.....

**C KARIUKI**  
**JUDGE**

