



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kariuki v Republic (Criminal Appeal E076 of 2022)
[2023] KEHC 3412 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E076 OF 2022
PM MULWA, J
APRIL 27, 2023**

BETWEEN

DAVID MAKUMI KARIUKI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. By an application dated January 17, 2022 (I believe this should be January 17, 2023) the appellant seeks release on bond pending appeal under the provisions of Sections 356 and 357 of the Criminal Procedure Code, Cap 75 of the Laws of Kenya. The application is premised on the grounds that the appellant desires to pursue an appeal which has overwhelming chances of success, and that being granted bail/bond will enable him prepare and conduct his appeal.
2. The application is supported by the annexed affidavit sworn by the appellant David Makumi Kariuki on January 12, 2023. He reiterates the grounds of the application.
3. The state opposed the application but failed to file a response despite being afforded the time to do so.
4. The appellant was convicted and sentenced for the offence of defilement contrary to section 8 (1)(3) of the Sexual Offences Act No 3 of 2006.
5. As opposed to bail pending trial, bond pending appeal is not a constitutional right. Section 357 of the Criminal Procedure Code provide as follows:
 - “(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”.

6. The case of *Jivraj Shah v Republic* [1986] eKLR sets out the principles for granting bail/bond pending appeal as follows: -
 - a. The existence of exceptional or unusual circumstances upon which a court of appeal can fairly conclude that it is in the interest of justice to grant bail.
 - b. Whether the appeal has overwhelming chances of success.
 - c. Whether there is a likelihood of the Appellant having served a substantial part of the sentence by the time of Appeal is heard and determined.
7. Other than merely averring that the appeal has overwhelming chances of success, the appellant has made no effort to demonstrate that there exists exceptional or unusual circumstances upon which an appellate court can fairly conclude that bond ought to be granted in the interest of justice.
8. Furthermore, there is no chance that a substantial part of the jail term will have been served by the time this appeal is determined as the appellant was sentenced to serve 11 years imprisonment on December 15, 2022.
9. The appellant’s application has not met the threshold required by law for granting bail pending appeal. In this circumstance, I decline to allow application.

Final Orders: -

10. The application for bond pending appeal is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 27TH DAY OF APRIL, 2023.

P.M. MULWA

JUDGE

In the Presence of:

Kinyua/Duale – Court Assistants

Appellant/Applicant - Absent

Mr. Muriuki - for State

Mr. Mumo - for Appellant

