



REPUBLIC OF KENYA



**Murathi v Republic (Criminal Appeal 29 of 2023)  
[2023] KEHC 3520 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3520 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL 29 OF 2023  
EM MURIITHI, J  
APRIL 27, 2023**

**BETWEEN**

**MOSES MURATHI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Appellant was convicted from the offence of attempted defilement C/S 9 (1), (2) of the *Sexual Offences Act* and sentenced to 10 years imprisonment on 21/2/2023 in Tigania Criminal Case No E007 of 2020.
2. By a Notice of Motion dated 7/3/2023, the appellant seeks an order for bail pending the hearing and determination of the appeal on the principal ground that the appeal has overwhelming chances of success; that there exist exceptional circumstances as the applicant is ailing and in need of medical attention; and that the appellant will have served a substantial part of the sentence before the appeal is heard,
3. The DPP has filed grounds of opposition dated 11/4/2023 contesting the chances of success of the appeal noting that no draft memorandum of appeal (correctly petition of appeal) has been annexed and existence of unusual or exceptional circumstances for the grant of appeal pending appeal while observing that there was no evidence by that the applicant was ailing and in need of urgent medical attention and, in any event, the prison authorities had adequate facilities for treatment, In addition the DPP urged that there is no possibility that the applicant would have served a substantial portion of his sentence before the appeal is heard.
4. This court has had opportunity previously to consider the principles for the grant of bail pending appeal in the case of *Boke Chacha v Republic* [2013] eKLR, of 7/6/2013 and held as follows:-
  - “4. According to authorities on bail pending appeal, bearing in mind that the applicant has now been convicted by a competent court and is on punishment



for the conviction which stands until it is set aside on appeal, the criteria for consideration is:

- a. Whether there exists exception or unusual circumstances which justify grant of bail in interests of justice. See *Jivraj Shah v R* (1986) KLR 605.
  - b. Such exceptional circumstances exist where the appeal has overwhelming chances of success or where a set of circumstances exist which disclose substantial merit in the appeal and that the sentence or a substantial part of it will have been served by the time the appeal is heard. See *Jivraj Shah* supra; *Mutua v R* (1988) KLR 497; and *Somo v R* (1972) E.A 476.
  - c. The previous good character of the applicant and the hardships facing his family, and his ill health, where there existed prison medical facilities for prisoners, are not exceptional or unusual circumstances. See *Dominic Karanja v R* (1986) KLR 612.
  - d. A solemn assertion, even if supported by sureties, that the applicant will not abscond if released is not sufficient ground for releasing a convicted person on bail pending appeal. See *Dominic Karanja*, supra.”
5. On the facts of this, the court is not satisfied that the appeal has overwhelming chances of success having not seen any petition to appeal, and the mere assertion that appeal has overwhelming chances is not sufficient; Failure to follow a pre- sentence report is not exceptional circumstance.
  6. The possibility of frame up and vendettas against the accused by the victim’s father as is likely with the prosecution and conviction of the father from grievous harm in Cr, Case no 402 of 202 persuaded the court to set the hearing of the appeal on priority basis. While the charge maybe a frame up, the applicant may have sought toe revenge the alleged grievous harm by the victim’s father. The court must hear the appeal on its merits.
  7. There is no evidence of ailment of the applicant that calls for medical attention shown to be unavailable at the G.K Prison facility where the applicant is being held.
  8. The applicant merely states that he has “suffered a lot of trauma in the hands of the alleged defilement victim’s father; I have ever since been on psychiatric follow-up which I cannot manage because of the incarceration.” For such follow up, the court shall direct the G.K Prison authorities to facilitate this treatment at the prison facility and escort to Meru Teaching and Referral hospital as necessary on the recommendation of the prison doctor, in the usual way as with other offenders and remandees held in that prison facility.

## Orders

9. Accordingly, for the reasons set out above, the application for bail pending appeal is declined. The application shall be fast tracked for hearing before the service week court.
10. The Record of appeal shall, as the court notes proceedings and judgment are ready and certified in type, be filed with 14 days and thereafter the counsel for the appellant and the DPP shall file submissions each taking 14 days starting with the applicant.



11. Hearing of the Appeal on 30/5/2023 before Service Week Court III.

Orders accordingly.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF APRIL, 2023**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Moku Obiria Advocate for Appellant

Mr. Masila for DPP.

