



REPUBLIC OF KENYA



**Manyengo v Republic (Criminal Appeal E026 of 2023)  
[2023] KEHC 17789 (KLR) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17789 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E026 OF 2023  
SC CHIRCHIR, J  
MAY 26, 2023**

**BETWEEN**

**CALEB INZIANI MANYENGO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Through the Notice of Motion dated May 15, 2023, the appellant herein seeks to be admitted to bail pending appeal, being this Appeal. He further seeks that in the event that the Application is allowed, he be admitted to the same bail terms as he had in the lower court.
2. The Application is supported by the affidavit of the applicant. It is deponed that the applicant was sentenced to 3 months imprisonment on May 15, 2023 in kakamega criminal Case No. 015 of 2022, and being dissatisfied with the outcome filed this Appeal. It is the applicant's case that he has an arguable Appeal with high probability of success. He has expressed his apprehension he could end up serving the term before the Appeal is heard and determined. Finally, he contends that he fully complied with the bond terms during his trial at the lower court.
3. The Application is not opposed by the state.

**Determination**

4. From a copy of the Judgment annexed to the Application (Annexure CMOO1), the applicant was charged with the offence of grievous harm contrary to section 234 of the *Penal Code*. He faced an alternative charge of committing an indecent act with an Adult contrary to section 11(a) of the *Sexual offences Act*. He also faced a second count of assault causing bodily harm contrary to section 251 of the *Penal Code*. He was convicted on the 2<sup>nd</sup> count and sentenced to 3 months imprisonment. Being aggrieved by the judgment, he has filed the present Appeal.



5. The right to bail is enshrined under article 49(1)h of the *Constitution*. It provides that an accused person has a right “to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released”.
6. However, in the case of *Charles Owango Oluoch v DPP* (2015) eKLR. the court held  
“..... Bail is a constitutional right where one is awaiting trial. After conviction that right is at the court’s discretion and upon considering the circumstances of the application”
7. The court have developed certain guidelines in the exercise of the aforesaid discretion. The guidelines were set out in the case of *Jivraj Shah v Republic* (1986) KLR 605 cited with approval in the case of Ibrahim samon *Ali v Republic* (2021)e KLR, where the court set out the principles as follows:
  1. “The principal contribution in an Application for bond pending Appeal is the existence of exceptional or unusual circumstances upon which the court of Appeal can fairly say that it is in the interest of justice to grant bail
  2. If it appears *prima facie* from the totality of the circumstances that the appeal is likely to be successful, on account of some substantial point of law to be argued and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions for granting bail exists.
  3. The main criteria is that there is no difference between overwhelming chances of and a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed and the proper approach is the consideration of the particular circumstances and weight and relevance of the point to be argued”.
8. Looking at the circumstances of this case, against criteria number (3) above, am of the view that the grounds of Appeal are arguable with some probability of success.
9. I have also considered the fact that the appellant herein, was sentenced to 3 months imprisonment. The likelihood of him serving the sentence before his Appeal is heard is very high, rendering the Appeal nugatory in the event that it succeeds.
10. I also take note of the fact that the Application is not opposed by the State.
11. Consequently, the Notice of Motion dated May 15, 2023 is allowed on the following terms:
  - a). The appellant is hereby admitted to bail pending the hearing and determination of this Appeal
  - b). The bail / Bond Terms Applicable to the appellant during his trial in the court below are hereby maintained.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF MAY 2023**

**S. CHIRCHIR**

**JUDGE**

**In the presence of:**

Mr. Mbetera for the applicant

