



**Emiriat alias Okuku Juma v Republic (Criminal Appeal
E027 of 2022) [2023] KEHC 21234 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21234 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E027 OF 2022
WM MUSYOKA, J
JULY 28, 2023**

BETWEEN

HARRISON JUMA EMIRIAT ALIAS OKUKU JUMA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from judgment, conviction and sentence by Hon. Mrs. L. Ambasi, Chief
Magistrate, CM, in Busia CMCCRC No. 1335 of 2018, of 29th June 2022)*

RULING

1. The appeal herein was lodged herein on July 12, 2022, vide a petition of appeal, dated July 11, 2022.
2. What I am called upon to determine is a Motion, dated July 19, 2023, which seeks admission to bond/ bail pending appeal. The grounds on the face of the application is that the appellant is sickly, and seeks to be released on bond so that he can seek specialized treatment. In the affidavit, that he swore on July 19, 2023, in support, he raises 2 grounds. The first is that his wife and children were left destitute after his imprisonment. He would like to be released on bond/bail, so that he can go home to attend to their needs. The second, is the same as that on the face of the Motion, that he is sickly.
3. There is a replying affidavit by Mrs. Shirley Chepkonga, Principal Prosecution Counsel, for the respondent, sworn on July 24, 2023. She avers that bail/bond pending appeal is not a constitutional right, as the appellant would be a convict who is not enjoying the presumption of innocence, and whose chances of absconding have increasingly gone up. She further avers that the grounds upon which the Motion is premised do not constitute exceptional circumstances.
4. The Motion was argued orally before me, on July 25, 2023, by Mr. Wanyama, Advocate for the appellant, and Mrs. Chepkonga, for the respondent. Both sides voiced over their respective filings, and I need not recite or narrate their respective oral submissions. What is significant is that Mrs. Chepkonga cited *Daniel Dominic Karanja v Republic* [1986] eKLR (Nyarangi, Platt & Gachuhi, JJA),



on the principles that underpin grant of bond pending appeal. These were identified as the appeal having overwhelming chances of success, existence of exceptional or unusual circumstances, and the previous good character of the appellant. It was underscored that the hardship facing the children of the appellant are not exceptional or unusual factors. It was also stated that ill-health per se would not constitute an exceptional or unusual circumstance in every case, as there exist medical facilities for prisoners in Kenya.

5. The position taken, in *Daniel Dominic Karanja v Republic* [1986] eKLR (Nyarangi, Platt & Gachuhi, JJA), with respect to the immediate family of the appellant facing hardship, takes care of that ground. According to the decision, ill-health is, in principle, an exceptional or unusual circumstance, but not in every case. Ill-health should be of consideration on a case by case basis. Is ill-health here a factor? I do not think so. The appellant does not disclose what he ails from. He has attached no medical records relating to his ill-health. There is no medical documentation upon which I can pronounce whether or not his ill-health, if at all, is exceptional or unusual factor, to warrant his being admitted to bond/bail.
6. It was argued that *Daniel Dominic Karanja v Republic* [1986] eKLR (Nyarangi, Platt & Gachuhi, JJA) is dated, and I should not rely on it. Mr. Wanyama did not cite any case law on the current law on the matter. Neither did he make an effort to demonstrate in what respects *Daniel Dominic Karanja v Republic* [1986] eKLR (Nyarangi, Platt & Gachuhi, JJA) should be considered dated, nor on what account he believes the principles stated in it do not accord with the Constitution of Kenya 2010. I am not persuaded that the principles in *Daniel Dominic Karanja v Republic* [1986] eKLR (Nyarangi, Platt & Gachuhi, JJA) are not current.
7. One other thing. The petition of appeal was filed herein on July 12, 2022. The Motion for bail/bond was filed on July 16, 2023, 1 year later. The same is, to my mind, an afterthought, filed after the appellant has had some taste of life in prison, and more so considering that he has provided no evidence that he is of ill-health.
8. In view of everything, I find and hold that the Motion, dated July 19, 2023, is without merit, and I hereby dismiss the same.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 28TH DAY OF JULY 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Wanyama, instructed by Wanyama & Company, Advocates for the appellant.

Mrs. Chepkonga, instructed by the Director of Public Prosecutions, for the respondent.

