



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL APPEAL NO. E017 OF 2021

WILSON GITHAIGA MURIITHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Application for bail pending appeal from the decision of I. Gichobi,

Principal Magistrate, in Kangema S.O. Case No. E006 of 2021

dated 16th August 2021]

RULING

1. The appellant seeks bail pending appeal. He was convicted by the lower court for *defilement* and sentenced to *twenty years'* imprisonment.
2. He lodged a *petition of appeal* through counsel on 26th August 2021. Contemporaneously with the petition, he filed a *notice of motion* praying for his release.
3. The appellant contends that the appeal has overwhelming chances of success; and, that there is a risk of serving a substantial part of the sentence. His learned counsel, *Mr. J. Kagwi*, also submitted that the appellant did not flout his bond in the lower court.
4. In a synopsis, the appellant's case is that there are *exceptional* circumstances that warrant grant of bail.
5. The application is *contested* by the Republic. Learned prosecution counsel, *Ms. A. Otieno*, filed a replying affidavit on 31st January 2022.
6. The legal parameters in an application of this nature were well stated by the Court of Appeal in *Jivraj Shah v Republic* [1986] KLR 605-

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 urged, and that the sentence or a substantial part of it, will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision is *Somo v Republic* [1972] EA 476 which was referred to by this court with approval in Criminal Application No. NAI 14 of 1986, *Daniel Dominic Karanja v Republic* where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial merit in the appeal which could result in the appeal being allowed.

8. It would be prejudicial to delve deeper into the merits of this appeal. It will be the duty of the first appellate court to *re-evaluate* the evidence and reach an independent view on the conviction and sentence.
9. But I can safely state the following. There was a birth certificate showing that the complainant was born on 16th March 2007. The complainant (PW2) fell pregnant and claimed that she was defiled by a person she knew (the appellant). Although she had another friend known as *John*, she insisted that she had coitus with the appellant.
10. The pregnancy was confirmed by the clinical officer (PW1). By the time of the trial, the pregnancy had been lost. One issue at the trial was whether the complainant targeted the appellant because of his money. The appellant also attacked the medical evidence and submitted that the P3 Form was a forgery.
11. I agree that the points raised in the petition of appeal are *arguable*. But I am not persuaded that there are *exceptional grounds* or that a

substantial point of law or evidence has been urged. The sentence of twenty years is not *illegal*. I *cannot* also say that a *substantial part* of the sentence *will* be served *before* this appeal is heard and determined.

12. It is true that the appellant was admitted to bail during his trial. But the *presumption* of innocence no longer holds *pure*. The appellant has been *convicted*.

13. The upshot is that the appellant has not reached the benchmark for grant of bail pending appeal. It follows that the notice of motion dated 26th August 2021 is dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 22ND DAY OF FEBRUARY, 2022

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Mr. Kagwi for the appellant instructed by J. M. Kagwi & Co. Advocates.

Ms. Muriu for the Republic instructed by the Office of the Director of Public Prosecutions.

Ms. Dorcas Waiganjo, Court Assistant.