



REPUBLIC OF KENYA



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

**Muthaura v Republic (Criminal Appeal E061 of 2022)
[2022] KEHC 575 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E061 OF 2022
TW CHERERE, J
MAY 26, 2022**

BETWEEN

JOSEPH MUTHAURA APPLICANT

AND

REPUBLIC RESPONDENT

((Appellant/Applicant) was charged in Tigania Criminal Case No. E094 of 2021 and was on 22nd March, 2022 convicted on 09th December, 2021 in the first count and sentenced to 3 years' imprisonment for assault causing actual bodily harm contrary to section 251 of the Penal Code; fined Kshs. 20,000/- in default 1-year imprisonment in the 2nd count for malicious damage to property and 1-year imprisonment in the 3rd count for assault causing actual bodily harm contrary to section 251 of the Penal Code)

RULING

1. Joseph Muthaura (Appellant/Applicant) was charged in Tigania Criminal Case No. E094 of 2021 and was on 22nd March, 2022 convicted on 09th December, 2021 in the first count and sentenced to 3 years' imprisonment for assault causing actual bodily harm contrary to section 251 of the Penal Code; fined Kshs. 20,000/- in default 1-year imprisonment in the 2nd count for malicious damage to property and 1-year imprisonment in the 3rd count for assault causing actual bodily harm contrary to section 251 of the Penal Code.
2. By a Notice of Motion dated 11.04.2020 brought under Section 357 (1) of the Criminal Procedure Code, Appellant has moved the court for orders that he be admitted to bail pending the hearing and determination of the appeal mainly on the grounds that he is aged and sickly, the sentences were illegal and excessive.



3. The application is supported by an affidavit sworn by the Appellant on 11.04.2022 in which he reiterates the grounds on the face of the application. Annexed to the affidavit is a copy of his identity card which reveals that he is 63 years old.
4. Ms. Mwaniki, learned counsel for the state submitted that the application was not opposed.

Analysis and Determination

5. I have carefully considered the application in the light of the affidavit on record and the response on behalf of the State.
6. Section 357 of the *Criminal Procedure Code* provides: -
 - (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
7. This court is thus clothed with the power to grant bail/bond with or without sureties, or to suspend execution of any sentence imposed by the subordinate court pending the hearing of the appeal. In granting bail pending appeal, the court is obliged to consider the circumstances of each case so that the discretion is exercised judiciously and not capriciously.
8. In the case of *Jivraj Shah v Republic* [1980] KLR 605, the Court of Appeal set out the parameters to be considered by an appellate court in applications for bail pending appeal as follows: -
 - a. The principal consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interests of justice to grant bail
 - b. 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 substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist.
 - c. The main criteria is that there is no difference between overwhelming chances of success 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 points to be argued.
10. Appellant raises the issue of the sentence being excessive and having been a first offender and aged, I find that the grounds of appeal raise a triable issue that is likely to succeed on appeal. Secondly, the Appellant's sentence is short and he is likely to serve a substantial part of it before the appeal is heard and determined Appellant's age also presents a special circumstance upon which the Court of Appeal can fairly this court concludes that it is in the interests of justice to him grant bail.
11. It is therefore hereby ordered as follows:
 1. Appellant shall be released on a cash bail of Kshs. 60,000/- pending the hearing and determination of this appeal
 2. Appellant shall ensure filing and service of the record of appeal without delay.
 3. Mention on 26th September, 2022 to confirm filing of the appeal and for directions



DELIVERED IN MERU THIS 26TH DAY OF MAY 2022

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Appellant/Applicant - Present

For the Appellant/Applicant -Mr. Nkunja Advocate

For the Respondent - Ms.Nandwa (PC 1)

