



**Githumbi v Republic (Criminal Appeal E010 of 2022)
[2022] KEHC 11062 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL APPEAL E010 OF 2022
CM KARIUKI, J
JULY 29, 2022**

BETWEEN

SAMUEL MWANGI GITHUMBI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Accused is charged with Count 1 offence of threatening to kill Contrary to Section 223(1) of the *Penal Code*.
2. Particulars being that in the years between 2020 and 15th June 2021 at Silale village in Mutitu Location, Nyahururu Sub County within Laikipia County, without lawful excuse uttered words threatening to Kill Gathoni Wanderi Gikonyo
3. In Count 2 creating disturbance in a manner likely to cause breach of peace Contrary to Section 95(1) (b) of the *Penal Code*.
4. Particular being that on 15th June 2021 at 16.30hrs at Silale village Nyahururu Sub County within Laikipia County created disturbance in a manner likely to cause a breach of the peace by abusing, insulting and threatening Gathoni Wanderi Gikonyo.
5. And finally Count 3 on same date and place used abusive words calling Gathoni Wanderi Gikonyo Malaya (meaning prostitute) Matakwa kubwa (meaning big buttocks) and lover to Village Elder with intent to provoke a breach of peace.
6. He pleaded not guilty and matter went into full hearing.
7. He was convicted and sentenced to 4 years, Count 1, 6 months Count 2 and 6 months imprisonment Count 3.



8. Being dissatisfied with the aforesaid verdict, he lodged appeal and sought meanwhile to be released on bail/bond pending appeal.
9. The Applicant compliant is that; He was not supplied with witnesses statement to enable him prepare his defence.
10. He did not understand Court language. He was not made aware of the Constitutional right of being represented by an Advocate.
11. He did not tender defence. Thus, he seeks to be released on bail pending appeal.
12. The Prosecution opposes the application on ground that no exceptional or unusual circumstances upon which Court can base grant for orders sought under the law. No overwhelming chances of success.
13. The matter may be expedited before lapse of imprisonment period.
14. In the case of *Charles Owanga Aluoch v Director of Public Prosecutions* [2015] eKLR where it was held that: -

“The right to bail is provided under Article 49(1) of the Constitution but is at the discretion of the court, and is not absolute. 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. The courts have over the years formulated several principles and guidelines upon which bail pending appeal is anchored. In the case of Jiv Raji Shah vs. R [1966] KLR 605, the principle considerations for granting bail pending appeal were stated as follows:

“(1) The principal consideration in an application for bond pending appeal is the existence of exceptional or unusual circumstances upon which the Court of Appeal can fairly conclude that it is in the interest of justice to grant bail.

(2) If it appears prima face 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 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.”

15. 24. The Court of Appeal in the case of *Dominic Karanja v Republic* (1986) KLR 612 stated that:-
 - (a) The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;
 - (b) The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners;



- (c) A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal;
- (d)
16. The record shows that the accused was taken to court on 21st June 2021 for plea and upon charges being read he denied same by saying “si kweli”.
 17. He was granted cash bail of Kshs. 5,000. On 27th September 2021 accused told Court that: “I do not have statements”.
 18. The language of Court was indicated interpretation English to Kiswahili.
 19. The hearing commenced without Court noting whether the statements were furnished to him or not.
 20. All the witnesses testified and subjected to cross -examination by the Appellant.
 21. The Prosecution case was closed and accused said he was not submitting.
 22. The Court ruled that accused had a case to answer thus he was put on his defence.
 23. Appellant chose to remain silent thus taken to have failed to rebut the evidence on record against him. Thus, he was convicted.
 24. The record on prima facie cases demonstrates accused was understanding and following the proceedings.
 25. The issue raised by the Appellant do not demonstrate exceptional circumstances to warrant release on bond/bail pending appeal, instead, the Court finds that it can expedite a hearing of instant appeal within shortest time possible.
 26. Thus, this application is rejected accordingly.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 29TH DAY OF JULY 2022.

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CHARLES KARIUKI
JUDGE

