



REPUBLIC OF KENYA



KENYA LAW
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**Koros v Republic (Criminal Appeal E012 of 2022)
[2022] KEHC 14664 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E012 OF 2022
AN ONGERI, J
OCTOBER 28, 2022**

BETWEEN

VINCENT KIPKURUI KOROS APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant's Appeal against the Sentence and conviction imposed by Hon. E. W. Karani(SRM) in CMCRC. No.29 of 2016 delivered on 13/4/2022 was dismissed on 1/7/2022.
2. The Appellant filed an Application dated 31/8/2022 seeking bail pending Appeal to the Court of Appeal.
3. The prosecution opposed the said application on the ground that this court is now functus official and further that the Appellant's Appeal having been dismissed, the Appellant is now a flight risk.
4. The Appellant relied on the Supporting Affidavit to the application in which it is deposed as follows: -
 - (i) That the appeal has overwhelming chances of success as the conviction and sentencing is not founded on the weight of evidence on record;
 - (ii) That the proceedings at the trial court proceeded while the appellant was on bail, and he never absconded from attending court at any time and thus it is in the interest of justice that this application be allowed;
 - (iii) That it would be unnecessary to keep the appellant in jail if his conviction will eventually be quashed and sentence set aside;



- (iv) That there would be no miscarriage of justice if the appellant is admitted to bail pending appeal or if the sentence is suspended/stayed, pending appeal since in the event the appeal fails, he will still serve the period in prison as ordered;
 - (v) That the evidence and testimony of the prosecution witness do not support the conviction and sentencing at all;
 - (vi) That the appeal has high chances of success on account of points of law that the applicant has raised in the appeal and that the sentence or substantial part of it will have been served by the time the appeal is heard if the appellant is denied bail;
 - (vii) That it is only fair and just that the appellant presents his appeal in a sober and settled state of mind which cannot be achieved while he is incarcerated and that the psychological and physical damage that he will have suffered while he is incarcerated may never be undone even after a successful plea
 - (viii) That the grant of bail pending appeal involves exercise of judicial discretion and the court has wide discretion to grant bail pending the hearing of the applicant's appeal and like all discretions, the discretion must be exercised judiciously;
 - (ix) That the applicant having satisfied the guiding principles under section 357(1) of the [Criminal Procedure Code](#) seeks the court's judicious exercise of discretion to admit him to bail pending the hearing of their appeal;
 - (x) That the court's finding in law and in fact were contrary to the evidence submitted by the prosecutor.
5. The Respondent filed grounds of opposition to the Application in which he stated as follows: -
- (i) That the court, having dealt with this matter and made final orders dismissing the applicants appeal and upholding both conviction and sentence, is now functus officio and lacks the jurisdiction to entertain an application of this nature;
 - (ii) That there is no appeal on record before the court of appeal, and what has been annexed to the supporting affidavit is a notice of appeal, which is merely an intention to appeal;
 - (iii) That the applicant faced a very serious offence of defilement of a minor below 11 years old, whose sentence is mandatory life in prison; owing to the severity of the sentence the appellant will be motivated to flee hence he is a flight risk and may not turn up for hearing of his appeal;
 - (iv) That the applicant is a convicted felon, and the issues he is raising in his proposed appeal are issues that were raised before the trial court and the 1st appellate court and were all dismissed;
 - (v) That the applicant has not demonstrated any exceptional circumstances;
 - (vi) That the applicant has emphasized on his good character, whereas good character does not amount to an exceptional circumstance;
 - (vii) That the proposed appeal lacks any merit and does not have any overwhelming chances of success.
6. The sole issue for determination in this case is whether the Applicant is entitled to bail pending appeal to the Court of Appeal



7. I have considered the submissions filed herein, the grounds for granting bail pending appeal are as follows: -
 - (i) That there exist exceptional or unusual circumstances upon which the court can conclude that it is in the interest of justice to grant bail;
 - (ii) 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
 - (iii) The sentence or substantial part of it will have been served by the time the appeal is heard.
8. The court of appeal in *Jivraj Shab v Republic* [1986] eKLR, stated the principles of granting bail pending appeal as follows: “There is not a great deal of local authority on this matter and for our part such as we have seen and heard tends to support the view that the principal consideration is if there exist exceptional or unusual circumstances upon which this court can fairly conclude that it is in the interest of justice to grant bail. 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.”
9. Odunga, J (as he then was) in *Joshua Kiarie Nguguna Versus Republic* [2021] eKLR, stated as follows: “It is therefore clear that a different test from that applied in bail pending trial is applied in bail pending appeal. When considering an application for bail pending appeal, the Court has discretion in the matter which must be exercised judicially taking into consideration various factors as follows:
 - a. Whether the appeal has overwhelming chances of success,;
 - b. There are exceptional or unusual circumstances to warrant the Court’s exercise of its discretion
 - c. There is a high probability of the sentence being served before the appeal is heard.”
10. In the current case, I find that the Applicant was convicted in the Trial Court with a very serious offence of defilement of a minor below 11 years olds whose sentence is mandatory life in prison.
11. This Court heard the first appeal and dismissed it. The Applicant has not demonstrated that his second appeal to the Court of Appeal has any chances of succeeding.
12. I find that there exists no exceptional or unusual circumstances in this case upon which the court can conclude that it is in the interest of justice to grant the Applicant bail pending his appeal to the Court of Appeal.
13. I find that the application dated 13/4/2022 lacks in merit and I dismiss the same.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 28TH DAY OF OCTOBER, 2022.

A. N. ONGERI

JUDGE

