



**MMW v Republic (Criminal Appeal E160 of 2024)
[2025] KEHC 228 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E160 OF 2024
DR KAVEDZA, J
JANUARY 21, 2025**

BETWEEN

MMW APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of rape contrary to section 3(3) of the [Sexual Offences Act](#), No. 3 of 2006. He was sentenced to serve 10 years imprisonment.
2. Being dissatisfied, the applicant filed an appeal challenging his conviction and sentence. Simultaneously, he filed the present application seeking a release on bail pending trial.
3. The application is premised on the grounds on the face thereof which are reiterated in the supporting affidavit sworn by the applicant. The averments made are that their appeal has overwhelming chances of success. The appellant is a student at Strathmore University and is in the process of undertaking examinations. He suffers from bouts of asthma which may be exacerbated by the conditions in prison. He will abide by the terms set by the court.
4. I have considered the application, the submissions of the parties, and a petition of appeal. The issue that arises for determination is whether the applicant has met the threshold for the grant of bail for pending appeal.
5. The provision of law that applies to bond/bail pending appeal is section 357 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya which provides as follows:
 - (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:

6. The principles for granting bond pending an appeal were reiterated in the case of *Jivraj Shah v Republic* [1986] KLR 605 which laid down the principles 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 are 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.”

7. From the principles established in the *Jivraj* case above, the applicant is under an obligation to demonstrate that there is a set of exceptional circumstances that would justify the grant of bail pending appeal by this Court. Further, that the sentence or a substantial part thereof will have been served by the time the appeal is heard. It is not enough, as the applicant has done in this case, to state that an appeal has overwhelming chances of success.

8. From the record, the applicant has filed a petition of appeal. I have carefully examined the grounds of appeal raised. Looking at the petition of the appeal, and the offences the applicant was convicted of, it hangs in the balance. Therefore, chances of their appeal succeeding cannot be authoritatively stated to be overwhelming.

9. Having carefully considered the application and perused the record of appeal in its entirety, I have considered the that the applicant is a student and there is need to continue with his education pending the hearing and determination of the appeal. In addition, this court has also considered the history of the trial at the lower court and take note that the appellant neither missed court nor interfered with witnesses. For the above reasons, I am inclined to consider the applicant’s application favourably.

10. The applicant at the trial stage was admitted to a bond of Kshs. 200,000 in the alternative a cash bail of Kshs. 100,000.

11. The court, in the circumstances, admits the applicant/appellant to a cash bail of Kshs. 100,000.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 21ST JANUARY 2025.

D. KAVEDZA

JUDGE

