



**Wanjohi v Republic (Criminal Appeal E034 of 2024)  
[2025] KEHC 1540 (KLR) (Crim) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1540 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL APPEAL E034 OF 2024  
LN MUTENDE, J  
FEBRUARY 20, 2025**

**BETWEEN**

**ANDREW WANJOHI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Andrew Wanjohi, the Applicant, through an application dated 20<sup>th</sup> December, 2023 seeks bond and / or bail pending hearing and determination of the appeal proffered.
2. The application is premised on grounds that: the applicant was convicted and sentenced to 20 years imprisonment; the appellant/applicant has lodged an appeal that has high chances of success; and, it is in the interest of justice for him to be released on bond.
3. That the appellant is an elderly man ailing at the prison; he is ready and willing to abide with conditions that may be imposed by the court; he was granted bond during hearing, and he complied with the bond terms during pendency of the trial, and, as such he is not a flight risk.
4. In an affidavit deposed by the applicant in support of the application, he avers that: he was arraigned in Rumuruti SPM's court SO Case No. E002 of 2024 and charged with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*, and he pleaded not guilty; the matter proceeded to full trial and on 20<sup>th</sup> September 2024 he was convicted and sentenced to serve 20 years imprisonment.
5. That: he was not contended hence appealed; an appeal that has high chances of success, as it is evident that the trial court erred when it found that the prosecution had proved its case beyond reasonable



- doubt; he is not a flight risk and that he is an elderly man and ailing and the prison environment is not favourable to his current health condition.
6. The application was served upon the Respondent through e-mail. At the hearing, learned counsel for the applicant Mr. Nderitu Komu, opted to rely on the application as filed, while the Respondent through learned Senior Principal Prosecution Counsel Ms. Gladys Kariuki stated that the application is opposed.
  7. I have considered rival arguments. The provisions of Section 357 of the [Criminal Procedure Code](#) enact that:
    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:
  8. It is worth noting that at an appellate stage the court deals with an offender who has been convicted where different principles apply as the person is already convicted; and, in the instant case serving sentence. Therefore, the issue of not being a flight risk is inconsequential. (Vide - *Masrani vs. R.* [1960] EA 321).
  9. An appellate court has discretionary power to grant bail pending appeal, however, the applicant must demonstrate that: his appeal has high chances of success; his case is exceptional; and, he is likely to serve the sentence during pendency of the appeal.
  10. The conditions are read disjunctively and courts have focussed on the proof of exceptional circumstances in the appellant's case as a material ground.
  11. In the case of [Jivraj Shab v Republic](#) [1986] eKLR the Court of Appeal 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 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.”
  12. The Bail and Bond policy guidelines provides that:

“the burden is on the convicted person to demonstrate that there is an overwhelming chance of success.” (See page 27 paragraph 4.30)



13. On the question of the appeal having high chances of succeeding, the applicant has not expounded any argument that makes him believe that the appeal will succeed. A contention that the court should have been of a contrary view is not sufficient.
14. As to whether the applicant case is exceptional or of unusual circumstances; it is deposed without proof that the applicant is elderly and ailing. What has been stated remains a mere allegation.
15. That notwithstanding, in *Dominic Karanja v Republic* [1986] KLR 612, the court held that ill health per se does not apply where there exist medical facilities for prisoners. It delivered itself thus:
  - “(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. If it turns out that the appellant has any infirmity, medical facilities that are fully equipped are available in prison that will deal with the issue hence, it does not amount to exceptional circumstances that should persuade this court to grant bail at this stage.
17. As to whether the sentence may be served before the appeal is determined; the appellant was sentenced on 20/9/2024 to serve twenty (20) years imprisonment. It is apparent that he will not serve the full term before this appeal is determined.
18. The upshot of the above is that the applicant has not demonstrated grounds for granting bail pending appeal. The application which is unmeritorious is dismissed.
19. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NYAHURURU, THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

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**L. N. MUTENDE**  
**JUDGE**

